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Maryland.
CONSTITUTIONAL CONVENTION COMMISSION.

COMMITTEE HEARINGS

1. Committee on the Judiciary Department.
July 12, 1966, 7:30 p.m., University
of Maryland School of Law, Baltimore,
Maryland.
2. Committee on State Finance and Taxation.
July 25, 1966, 3:00 p.m., One Charles
Center, Baltimore, Maryland.
3. Committee on State Finance and Taxation
and Committee on Miscellaneous Provisions.
July 29, 1966, 9:00 a.m., University of
Maryland School of Law, Baltimore,
Maryland.
4. Committee on State Finance and Taxation.
August 15, 1966, 2:00 p.m., University
of Maryland School of Law, Baltimore,
Maryland.
5. Committee on State Finance and Taxation
and Committee on the Executive Department
with the Comptroller of the State of
Maryland. November 17, 1966, 10:00 a.m.,
State Office Building, Baltimore, Maryland.
6. Committee on the Judiciary Department.
November 29, 1966, 6:30 p.m., University
of Maryland School of Law, Baltimore,
Maryland.

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CONSTITUTIONAL CONVENTION COMMISSION

Second Report of the Committee on Judiciary Department

Meeting of the Constitutional Convention
Commission, Committee on Judiciary Department, held on
Tuesday, July 12, 1966, at 7:30 o'clock p.m., at
Moot Court Room, Law School Building, University of
Maryland, Baltimore, Maryland.

PRESENT:

- H. Vernon Eney, Esquire,
Chairman, Constitutional Convention
Commission
- Honorable Ridgely P. Melvin, Jr.,
Chairman, Committee on Judiciary Department
- Melvin J. Sykes, Esquire, Committee Member
- Miss Elsbeth Bothe, Committee Member
- Robert J. Martineau, Esquire, Committee Member
- Mr. Lawrence F. Rodowsky, Reporter

Reported by:
C. J. Hunt

1 MR. ENEY: May we have your attention, please?
2 This is a public meeting of the Committee on the Judiciary
3 Department of the Constitutional Convention Commission.
4 The Chairman is Mr. Ridgely Melvin. I will turn the meet-
5 ing over to him in a very few moments. I want to make
6 just a few preliminary comments.

7 All of you are invited to this meeting for the
8 purpose of considering and discussing with us the Second
9 Report, tentative draft of the Second Report of this
10 Committee, which is going to be presented to the full
11 Commission in the very near future.

12 The Report comprises, as you know, a tentative
13 draft of most of what ultimately will be the Judiciary
14 Article of the Constitution.

15 I want to call to your attention several basic
16 precepts that the Commission has been endeavoring to
17 follow in the drafting of all portions of the Constitution
18 and in its decisions as to what to omit and what to in-
19 clude.

20 The principal guideline, I suppose, is that we
21 are hoping to make the draft of the Constitution a very

1 terse, succinct document, couched in simple, ordinary
2 language, understandable by the average person, without
3 a great deal of interpretation. This means that we have
4 deliberately decided to ignore the beneficial effect that
5 might otherwise be obtained from the use of language
6 which has heretofore been construed by the courts, so that
7 if you notice the language, it is quite different and in
8 simple terms, nonlegalistic wherever possible. This is
9 the reason.

10 Secondly, the Constitution is intended to
11 be an instrument defining the structure of government.
12 It is not intended to be the repository of all the de-
13 tailed provisions for making that government operate.
14 Therefore, it will be, you might say, a bare bones
15 constitution, or a skeleton or an outline, largely con-
16 ferring power and spelling out in very general terms
17 limitations on that power.

18 Thirdly, the principal departments or branches
19 of the Government, the Executive, Legislative, and the
20 Judicial, so far as the Constitution is concerned be
21 defined in broad outline only. This means that, in all

1 probability, the Executive, under the Executive Article,
2 will be sometimes referred to, and perhaps inaccurately,
3 as the strong Executive, meaning not the particular indi-
4 vidual but the powers of the Executive. The Legislative
5 Department will by and large be the repository of all
6 sovereign powers, except as expressly limited in the
7 Constitution, rather than having the Constitution delegate
8 specifically to the Legislature its powers.

9 This same general notion pervades this article.
10 The Judiciary is intended to be insofar as it can be
11 under the Constitution, self-governing and completely
12 independent or as nearly independent as may be of the
13 other branches of government.

14 The arrangement or the organization of the Com-
15 mission is such that each committee reports its drafts to
16 the full Commission, which considers them, after having
17 in a preliminary way considered and approved certain
18 broad general principles which the Committee needed to
19 have determined before it could begin its labors of draft-
20 ing.

21 With respect to this article of the Constitution,

1 that means only that the Commission has approved the four-
2 tier structure of the Judiciary Department in Maryland.
3 That is, that there be a top court, the Supreme Court,
4 and an intermediate appellate court, one nisi prius court
5 of general jurisdiction throughout the State and one
6 court of limited jurisdiction throughout the State. Al-
7 though this is a matter of policy which governs this
8 particular document and which has been adopted by the
9 Commission, it is, of course, only a tentative adoption
10 because until the entire Constitution is put together and
11 considered by the Commission as a whole, it will not be
12 finally adopted.

13 One last word: There is in the Commission a
14 Committee on Style. The function of this committee is
15 twofold. It has laid out initially certain guidelines for
16 the general guidance of the draftsmen of each committee.
17 In addition, every draft before being considered final
18 by the Commission will be reviewed by the Committee on
19 Style, so that we will end up with one document, even
20 though parts of it may have been drafted by eight differ-
21 ent committees. For that reason, we are not particularly

1 anxious to have your comments or spend a great deal of
2 time this evening on matters of mere style and phraseology.
3 I do not mean to suggest that no consideration should be
4 given to words, because it may be that the words that
5 you want to discuss and mention have a very substantive
6 effect, and it is not merely a matter of style, but we
7 will not spend time this evening on matters of grammar
8 and punctuation.

9 With those introductory remarks, I turn the
10 meeting over to Mr. Ridgely Melvin, who is Chairman of
11 the Committee.

12 THE CHAIRMAN: I think most of you have a copy
13 of what is called Tentative Draft Number 4, which has been
14 handed to and which has been replaced by tentative draft,
15 second draft of the Committee on Judiciary Department. If
16 there is no one who does not have a copy of that, we
17 have extra ones up here at the desk. The date of the Re-
18 port is July 8, 1966.

19 As Vernon has said, the Commission has not
20 acted on this Second Report, and as a matter of fact, the
21 sub-committee itself has not formally adopted this Second

1 Report so that to that extent it is very tentative as far
2 as the sub-committee is concerned.

3 I think to save time, the best procedure to
4 follow tonight would be one which we followed when we
5 met informally with the sub-committee of the State Bar
6 Association and simply go over each section, section by
7 section.

8 We are going to try to end the meeting by
9 10 o'clock, or hopefully before then, so if we get bogged
10 down on one section, we might have to leave that and go
11 to the next one. Time will dictate what we do in that
12 regard.

13 As we go over each section, we hope that you
14 will feel very free to make any criticisms or suggestions
15 or ask any questions that you may have in mind.

16 The very first section of the Article sets out
17 the basic four-tier structure that Vernon mentioned. It
18 is pretty self-explanatory. If any of you have any ques-
19 tions or suggestions to make on that section, we would be
20 glad to hear from you.

21 MR. SCHLITZ: Was any consideration given to the

1 idea of the three-level court, making the People's Court
2 an addition of the Circuit Court? This has been done
3 in Illinois, apparently quite successfully.

4 THE CHAIRMAN: It was considered. In our
5 opinion, the four-level court system is better.

6 JUDGE FAIRBANKS: Is there any possibility we
7 can get a different name than People's Court? I know
8 that you have indicated it here. It seems to me there
9 ought to be someone with enough ingenuity in this group
10 to think of something other than the People's Court.

11 THE CHAIRMAN: That same sentiment was voiced
12 at the State Bar Association just this past weekend. The
13 State Bar Committee, I think, recommends that the names
14 of the fourth level of courts be called District Courts.
15 Our present thinking is that that could be confused or
16 confusing with the Federal District Courts. We don't have
17 any strong feeling about it. We have the same reservations
18 about using that name that you have mentioned. It is one
19 of the situations where a rose by any other name, I sup-
20 pose, but if you can suggest some other name other than
21 People's Court or District Court, we would be glad to

1 consider it.

2 JUDGE FAIRBANKS: Why not a Sessions Court,
3 just a Common Sessions. In the District of Columbia, they
4 use General Sessions.

5 MR. SYKES: You also get Special Court, Judi-
6 cial Court.

7 JUDGE FAIRBANKS: There are all kinds of names
8 used throughout the country. There is no harm going back
9 to perhaps an old English name. One could be picked out.
10 I am not prepared to suggest one. Somehow People's Court
11 has an unsavory connotation at this particular time.

12 JUDGE CLAPP: Mr. Melvin, wouldn't the confusion
13 in the term, District Court, be avoided anyway in that
14 your docketing would be the District Court for the First
15 District of Maryland or the Second District, as the case
16 may be? We would avoid the possible confusion of the
17 Maryland Federal Court.

18 THE CHAIRMAN: I suppose it would, if it is
19 done that way. As Vernon said, we have not put that
20 detail into the Constitution.

21 JUDGE CURLEY: What kind of confusion would

1 you expect to result?

2 THE CHAIRMAN: Just in the name, the District
3 Court.

4 JUDGE CURLEY: I could see if you have, let's
5 say, two courts in Maryland, that is, State courts, that
6 had the word District in each of their titles. To me, it
7 is almost farfetched to expect any conflict between a
8 Federal District Court and this kind of court.

9 MR. ENEY: There is conflict, in the newspaper
10 and the news media. They don't say District Court of the
11 United States for the District of Maryland. They say
12 District Court. You have States where you have this.
13 Texas is one. Judge Niles, you know of other States
14 where they have District Courts.

15 JUDGE NILES: Massachusetts has District Courts.

16 MR. ENEY: Many of them.

17 THE CHAIRMAN: Another reason that we are
18 leading towards the name, People's Court, is that it has
19 achieved a certain acceptance in Maryland. There are a
20 number of courts, as you know, a number of counties which
21 use the name, and it is sort of identified with upgrading

1 of the courts, I think, but as I said, we don't have any
2 real strong feeling about it one way or the other. It
3 is just a name. How do some of the others feel about
4 that? Do you have any strong feelings about it one way
5 or the other?

6 JUDGE PROCTOR: Is the proper name of the
7 Federal Court, District Court, or isn't it the United
8 States Court for the District?

9 THE CHAIRMAN: United States District Court.

10 JUDGE FAIRBANKS: With your permission, I will
11 think up a few names, put them in writing and send them
12 to you for whatever use you want to make of them. I am
13 not opposed to this name absolutely, but I thought since
14 we are changing the general character and concept of the
15 court, now might be a good time to change the name, too.

16 THE CHAIRMAN: We certainly would appreciate
17 any suggestions along that line. We don't want to spend
18 too much time on names. You will notice that the name that
19 we have tentatively adopted for the highest court is the
20 Supreme Court of Appeals. That is as the comment indicates,
21 is sort of a compromise between tradition and function.

1 Does anybody have any comments on that or
2 care to make any?

3 JUDGE BRUNE: I am in agreement with the
4 Committee's suggested name, in the interest of clarity,
5 while nonetheless shedding a tear.

6 JUDGE NILES: Mr. Chairman, may I ask Judge
7 Brune if he thinks that there is a good reason for not
8 saying Supreme Court in the way that I think it is forty-
9 seven States do?

10 JUDGE BRUNE: Well, the answer to that, Judge
11 Niles, is quite simple. I think Supreme Court as applied
12 to a State tends to imply an exaggeration, less than
13 supreme under the present circumstances.

14 THE CHAIRMAN: Let's move on to the second
15 section, which sets forth the judicial and composition
16 of the Supreme Court of Appeals.

17 You will notice that in the original second
18 tentative draft, the Supreme Court of Appeals was to have
19 appellate jurisdiction only, and then upon further reflec-
20 tion and considering the fact that the present Constitution
21 doesn't say what jurisdiction the Court of Appeals shall

1 have, we felt that it would be sufficient to just say
2 they will have such jurisdiction as may be provided by
3 law, and we anticipate that there will be attached to a
4 constitution to be voted on what they call a schedule,
5 which will maintain the present jurisdiction, statutory
6 jurisdiction of the Court of Appeals until and unless it
7 is changed by the Legislature.

8 MR. SYKES: Isn't the general tendency now to
9 give the appellate, the Supreme Court only appellate
10 jurisdiction? I have also in mind the problem where
11 you would give the Legislature presumably under the Con-
12 stitution power to cut off all jurisdiction from the
13 Court of Appeals. I think that the jurisdiction should
14 be appellate only and that the Legislature should be re-
15 quired by the Constitution to spell out that appellate
16 jurisdiction and to grant it. I would suggest that it
17 should read that the Supreme Court of Appeals shall have
18 an appellate jurisdiction, which shall be provided by law.

19 MR. MARTINEAU: I don't think that would be
20 required by the Legislature.

21 MR. SYKES: I think it would give the Supreme

1 Court the power to deprive it of jurisdiction and cut
2 its jurisdiction. too, substantially would be unconstitu-
3 tional. I am not sure of the other way.

4 MRS. BOTHE: I think the fact that influences
5 the Committee is the fact we got along for a hundred
6 years without such a provision, just the provision that
7 it has the jurisdiction provided by law, period.

8 MR. MARTINEAU: The difficulty with the other
9 aspect of it is, if you provide that they have the right
10 to draft into the Legislature to have appellate juris-
11 diction in all cases, then there is no way of limiting
12 anyone from not having a right to go all the way from
13 People's Court right up to the Supreme Court, no matter
14 what type of case it is and no matter what justifiable
15 reason there may be for cutting off the appeal at any
16 particular point.

17 MR. SYKES: I think the draft should make clear
18 you could cut the right of appeal, some rights of appeal
19 off, but that the Court of Appeals should have appellate
20 jurisdiction.

21 MR. ENEY: That would mean, then, that the

1 draft should simply say, should have appellate jurisdic-
2 tion, without saying final.

3 MR. SYKES: Yes. That would prevent the
4 Legislature from completely drifting.

5 MR. MARTINEAU: I doubt it would. It wouldn't
6 be a grant of jurisdiction. It would be merely a limi-
7 tation.

8 MR. SYKES: No. The statement of the Constitu-
9 tion that the Appellate Court of Appeals, Supreme Court
10 of Appeals shall have appellate jurisdiction is a man-
11 datory statement.

12 MR. MARTINEAU: Then all you have to do is
13 leave the jurisdiction in one case, one type of case, and
14 that wouldn't solve the problem.

15 MR. INVERNIZZI: At Atlantic City, the language
16 I noticed was the Supreme Court of Appeals shall have
17 appellate jurisdiction and such other jurisdiction as may
18 be provided by law.

19 THE CHAIRMAN: That is correct.

20 MR. ENEY: This brings to light the fact that
21 the reason for the provision for other jurisdiction is

1 that other departments of the Commission are considering
2 situations in which the Supreme Court would have original
3 jurisdiction, as for instance in apportionment cases.

4 JUDGE PROCTOR: This very draft gives them
5 jurisdiction to remove judicial, which is something other
6 than appellate, and the present Constitution says, as now
7 is, and may be. What do you have as now is?

8 MR. ENEY: One of the general rules that we
9 are trying to follow in the Commission, and I forgot to
10 mention earlier, is that we are striving to avoid every
11 statement anywhere in the Constitution which incorporates
12 unspecified provisions of the law as they stand at the
13 time so that we will not use any phrases such as juris-
14 diction now conferrable or such as is now the law or any-
15 thing of the sort, so that you can get everything needed
16 in the Constitution and not have to refer to some other
17 source.

18 JUDGE CLAPP: The problem that has been run
19 into in code States, unless you can find something in the
20 Constitution, it may well be prohibited.

21 MR. ENEY: No, because of the general rule

1 that we hope to follow, that the whole outline of the
2 Constitution is going to be one of conferring broad
3 powers, such as the first article, which says that judicial
4 power shall be vested in, which broadens all judicial
5 power.

6 JUDGE CLAPP: If you make the provision, as is
7 important to, such jurisdiction as provided by law, you
8 run into a problem then that the Legislature is empowered
9 to give the Court of Appeals nonjudicial functions?

10 MR. ENEY: I know, because of the first section.
11 They tend to adopt the separation of powers.

12 JUDGE CLAPP: That may be spelled out in another
13 portion. This is merely a grant of judicial power.

14 MR. ENEY: It is a grant of all judicial powers.

15 JUDGE CLAPP: Is it intended to put in a
16 prohibition against action by the Legislature that will
17 encroach upon judicial powers or give extra judicial
18 powers to the Judiciary?

19 MR. ENEY: I would anticipate that the Consti-
20 tution will have the same separation of powers that we
21 have now and have had under all of our constitutions.

1 JUDGE CLAPP: Of course, then you run into the
2 problem that you said you didn't want to incorporate,
3 which was taking into the present Constitution any refer-
4 ence to the old constitutional provisions.

5 MR. ENEY: No. This doesn't embrace the refer-
6 ence to any other provision. I am just saying that the
7 fundamental concept is going to be that the Constitution
8 has the same separation of powers between the three
9 branches of government as we have always had.

10 JUDGE CLAPP: I understood you to say also
11 the Legislature would have all power, unless specifically
12 prohibited in this Constitution.

13 MR. ENEY: That was probably expressed too
14 broadly -- all legislative powers.

15 THE CHAIRMAN: If we don't make any -- and I
16 am sure you all understand that we can't act on all these
17 suggestions as we go along, but we are taking due note
18 of them, and we will consider them fully at a later meet-
19 ing.

20 The next section under Subsection (b) sets
21 forth the composition of the Supreme Court of Appeals

1 and is self-explanatory, I think.

2 JUDGE CARTER: Mr. Chairman, on that, absent
3 any division of territory from which the judges must
4 come, as was spelled out in the constitutional amendment
5 for the Special Court of Appeals, what is the thinking on
6 that? I also noted that the follow up of this, the
7 nominating committee, there are no territorial limitations.
8 All Members are to be elected by the Bar of the State.
9 There is no territorial limitations on that, and neither
10 on the appointees by the governor. It seems to me that,
11 my understanding at least, feeble as it may be, is that
12 a constitution is supposed to set up certain safeguards
13 beyond which the Legislative branch or the Executive
14 branch, Judicial branch for that matter, may not go.
15 Now, if the question is that this thing is to be left
16 wide open and there is no restrictions at all as to where
17 the judges come from, then it seems to me a very natural
18 result of that that Baltimore City and the metropolitan
19 counties will dominate this Commission, and the probability
20 is that that is where your appellate judges are going to
21 come from. That is certainly contrary to what has here-

1 tofore been the rule and been the workout of the situation.
2 I would like something on that.

3 THE CHAIRMAN: Judge Carter, the tentative
4 thinking of the majority of the Committee is that the
5 matter of districting and residents' requirements is
6 something that should be left to the Legislature.

7 JUDGE CARTER: Then you get right back to
8 where you are now in the reapportionment business and the
9 end result of that is that the rural areas of your State
10 are going to be unrepresented, in all probability. That
11 seems to me to be an undesirable thing. I don't see
12 any reason why you should spell out in this Constitution
13 all amendments concerning the Special Court of Appeals,
14 very definitely districts that are invaded before the
15 Bar Association, the Legislature and should respectively be
16 omitted from this draft of the Constitution.

17 THE CHAIRMAN: I think the constitutional
18 amendment does not spell it out. It is in the statutory
19 portion.

20 JUDGE CARTER: That was the understanding, I
21 think, of the Legislative Committees that passed on it.

1 It was spelled out.

2 THE CHAIRMAN: I may be wrong about that.

3 JUDGE CARTER: Unless it be spelled out in the
4 amendment.

5 JUDGE BRUNE: I don't want to interrupt, but
6 my recollection is that the constitutional amendment
7 now pending providing for the intermediate appellate
8 court does set up judicial, but provides they may be
9 changed by the Legislature. I may be in error.

10 MR. ENEY: That, in effect, is what this does.

11 JUDGE CARTER: This leaves it wide open. This
12 is only one voice. I am diametrically opposed to that
13 sort of proposition.

14 MR. ENEY: My point is that is exactly what
15 is happening under the constitutional amendment with res-
16 pect to the court.

17 JUDGE CARTER: Why put it in there at all? If
18 you are not going to write some safeguards in the Consti-
19 tution, that secures representation on a territorial
20 basis, at least to some extent, why put it in there at
21 all? You have got a Legislature that is predominantly

1 urban, and human nature being what it is, that is where
2 you are going to end up.

3 MR. SYKES: Can't you solve the problem by
4 putting in a provision in the Constitution, which is as
5 far as you can go in the Constitution, to the effect that
6 the Legislature shall provide from time to time for a
7 system of appellate judicial districts designed to achieve
8 substantial equality of treatment, fair representation for
9 the different geographical parts of the State.

10 MR. ENEY: The deliberate purpose of this
11 provision right at the moment, I think you ought to
12 understand the purpose, is to have the complete flexibility
13 of districting by the Legislature, just as you would
14 have under the other amendment to which you refer, but in
15 addition, to leave it to the Legislature if it so deter-
16 mines to provide for statewide election of judges.

17 JUDGE CARTER: That is the exact point.

18 MR. ENEY: That is exactly what it provides for.

19 JUDGE CARTER: That is my point. I don't think
20 the Constitution ought to leave that thing as wide open
21 as that to a Legislature that is predominantly urban and

1 obviously nonrural, if you are going to secure represen-
2 tation on this court in a territorial way, at least to
3 some extent, and I think the limitation ought to be
4 written into the Constitution. It ought not be legis-
5 lative will.

6 THE CHAIRMAN: Judge Carter, it was suggested
7 at Atlantic City that the Constitution provide that there
8 be districts but not attempt to pinpoint exactly what
9 the geographical districts would be in the Constitution.

10 JUDGE CARTER: Could there be something put
11 in there to the effect that there should be provision
12 made on a territorial geographic basis indicating some
13 distribution on that score?

14 THE CHAIRMAN: I think another suggestion, and
15 I believe Judge Oppenheimer made this at the meeting in
16 Atlantic City, that the districts be as they are now in
17 the present setup until and unless changed by the Legis-
18 lature.

19 JUDGE CARTER: Well, I don't want to belabor
20 the point, but it seems to me if you are going to have a
21 statewide court, then some consideration, I don't say

1 predominantly, but I say some consideration ought to be
2 given to geographical considerations.

3 MR. ENEY: Look at Section 4(b), on Page 4,
4 and as applied to the Circuit Court. Is that the kind of
5 a system leaving the power to the districts, setting up
6 the guidelines?

7 JUDGE CARTER: The distinction between the two
8 as I read the whole article is your nominating committee
9 is composed of people from that district, which is not
10 going to be --

11 MR. ENEY: Not the appellate.

12 JUDGE CARTER: You said 4?

13 MR. ENEY: Section 4. I merely suggest that
14 you consider whether the districting provisions in
15 Section 4(b) with respect to the Circuit Court, if applied
16 to the Court of Appeals, the Supreme Court, would meet
17 the point that you are making.

18 JUDGE CARTER: Yes, I think it would. If there
19 is some addition to that, that a districting of represen-
20 tation on a court, some sort of maybe general language
21 ought to be written in the Article, embodying the theory

1 that geographical consideration be given by the Legislature.

2 MR. ENEY: That is why I am asking you to look
3 at 4(b). That is exactly what it does.

4 JUDGE PROCTOR: What is done in New York and
5 Illinois?

6 JUDGE CARTER: The answer is Yes. It is not
7 less than so many counties. There would have to be some
8 change. There is enough to meet the general theory.

9 JUDGE PROCTOR: What is done in Illinois and
10 New York?

11 THE CHAIRMAN: I frankly don't know. Do you
12 know?

13 JUDGE CARTER: It seems to me that following
14 through on this thinking that while there certainly ought
15 to be representation on the nominating committee on a
16 statewide basis, that there ought to be an area from which
17 the appellate judge comes. There ought to be more than
18 just the same representation as would be for District Three
19 or if the man is coming from District One, and One ought
20 to have more voice from that than District Three.

21 MR. ENEY: You are talking about the nominating

1 committee?

2 JUDGE CARTER: Yes.

3 MR. ENEY: That is not covered by this Commis-
4 sion.

5 JUDGE BRUNE: Mr. Chairman, I don't like to
6 disagree with my good friend, Judge Carter, but one of the
7 virtues of this draft seems to me to be its departure
8 from any requirement for districting in connection with
9 the organization of the Court of Appeals. I should be
10 very reluctant to see the section amended in such a way as
11 to make any form of districting mandatory unless and un-
12 til there were a change in the constitutional proceedings.
13 It is possible that the suggestion such as Judge Oppenheimer
14 made might meet the objections which Judge Carter has
15 raised, and it might meet my personal distaste for insis-
16 tence upon local districts.

17 MR. MARTINEAU: Judge Carter, I have here a statis-
18 tical summary prepared for the conference of chief justices,
19 prepared by the council of State governments, which lists
20 the States and the makeup of their highest court and lists
21 those which have requirements for districting, selection,

1 and those which do not. Of all of the States, the only
2 ones that require judges to be selected from specific
3 geographic districts are Illinois, Kentucky, Louisiana,
4 Maryland, Mississippi, Nebraska, Oklahoma and South
5 Dakota. All of the rest permit the judges to be selected
6 from any part of the State.

7 JUDGE CARTER: How are they where they permit
8 selection from any part of the State, how are they
9 selected?

10 MR. MARTINEAU: In Illinois I know it is
11 nomination by political party.

12 JUDGE CARTER: No. In States where there is
13 no requirement that they come from a particular district,
14 how does that, in fact, work out so far as geographical
15 distribution of memberships?

16 MR. MARTINEAU: Where they are not required?

17 JUDGE CARTER: Yes.

18 MR. MARTINEAU: So far as I know, I have never
19 heard any criticism of a statewide appellate court where
20 districting was not required, that all of the judges came
21 from the same area or anything like that.

1 JUDGE CARTER: I think you have got a situation
2 in the State that may be somewhat unusual, and that is,
3 you have got 70 per cent of the voting strength of the
4 State in Baltimore City and the County.

5 MR. MARTINEAU: I don't think we are too un-
6 usual in that.

7 JUDGE CLAPP: May I say for whatever it is
8 worth that the suggestion of Judge Oppenheimer is very
9 appealing to me. If there is an unusual beginning, such
10 as we now have in the Court of Appeals, but with the
11 power of the Legislature to change it, I think there is a
12 vast difference between starting out with districts and
13 starting out with an unlimited power to impose statewide
14 elections. I think there is a great deal of difference
15 between getting the Legislature to change from districting to
16 statewide elections than there would be getting an open
17 power to adopt whatever it sees fit in the first instance.
18 To adopt this suggestion is very appealing to me.

19 THE CHAIRMAN: It could be districting and
20 still statewide elections.

21 JUDGE CLAPP: That is possible.

1 MR. MARTINEAU: I don't think you are opposed
2 to the statewide elections as much as you are to the pos-
3 sibility of their being selected from any one particular
4 area, is that correct?

5 JUDGE CARTER: Yes. I haven't any particular
6 quarrel with the statewide election. I haven't given
7 very much thought to that. When you gear this back into
8 your personnel of your nominating committee, it seems to
9 me it could well result in the selection of your appellate
10 judges in both courts from your urban areas without any
11 representation from your rural areas. I don't think that
12 is particularly healthy or a profitable result in the
13 statewide area.

14 THE CHAIRMAN: I think Judge Prescott has ex-
15 pressed the thought that there is astute advantage to
16 having judges from different areas of the State because
17 of the probability of their familiarity with the local
18 problems, local decisions.

19 JUDGE BRUNE: If I may offer one bit of more
20 or less history, Mr. Chairman: At the time when the bond
21 amendment was proposed, there was considerable discussion

1 on the subject of districting, and a compromise was
2 written into the plan as originally proposed, as I recall
3 it, which provided for recognition of different sections
4 of the State. Without such a compromise, it wouldn't have
5 gotten through the Legislature of those days. I empha-
6 size that. That long preceded Baker and Todd. I saw no
7 objection to writing/in ^{it} because as a practical matter,
8 I thought it was what would be done anyhow, and I believe
9 that despite Judge Carter's words and feelings that it
10 would work out, that there would be representation of
11 different parts and different interests in the State.
12 It is just the way things seem to go.

13 THE CHAIRMAN: Let's move on to the third level.

14 JUDGE CARTER: I don't want to debate this
15 matter with Judge Brune, but if that is the situation, it
16 seems it is more appropriate to spell it out than leave
17 it to chance.

18 THE CHAIRMAN: Let's move to the third section,
19 dealing with what we have called the Appellate Court,
20 which corresponds to the Court of Special Appeals that
21 will be voted on in November.

1 JUDGE BRUNE: Mr. Chairman, I am sorry, I
2 missed this. Are you taking up (b), of Paragraph 3?
3 Before you leave (b) --

4 THE CHAIRMAN: I skipped that. Do you want to
5 go back to that?

6 JUDGE BRUNE: I want to inquire why you chose
7 7 instead of 5?

8 THE CHAIRMAN: I think the thing was that,
9 first of all, I think we are influenced by Judge Prescott's
10 expression of opinion on it and secondly, we felt that
11 this intermediate court will take some time to get
12 started, and we really don't have the experience with it,
13 and that until that time, we should keep the present
14 seven-member court. Bob, do you have anything else to
15 say on this?

16 MR. MARTINEAU: No. I was just checking this.

17 MR. INVERNIZZI: Statistically, most States
18 have seven.

19 JUDGE BRUNE: I am well aware of that. I am
20 now operating in a State, one composed of five and the other
21 seven.

1 THE CHAIRMAN: Can you give us your reasons for
2 that?

3 JUDGE BRUNE: I think one reason is because
4 of the provision that we have had, one of the existing
5 provisions, that the courts ordinarily sit in panels of
6 five and not of seven. I think that is considerably
7 less than ideal.

8 This was before our provision was adopted. His
9 reply was, in substance, that most people seem to think
10 it worked out all right, except the court. There are
11 difficulties in that. If you will look at the number of
12 cases that are put down for reargument under the provisions
13 of the present constitutional provision where only three
14 of the five favor one result the losing party is entitled
15 as a right to a reargument. I think you will see that
16 that provision has caused^a/good many rearguments, which take
17 up a good deal of time and do not seem to be extraordinarily
18 helpful, I should say.

19 THE CHAIRMAN: Under this provision we would
20 contemplate that the court would sit as a seven-member
21 court and there would not be that provision about a

1 reargument in its 3 to 2 decision.

2 JUDGE BRUNE: That would be much better. I
3 think it is much better for all of the members of the
4 court to sit in every case it is to decide. The neces-
5 sities of the situation rather force that 7-5 setup on
6 us. At the time, I was extremely doubtful as to how long
7 it would work and so advised the legislative committees
8 which heard the matter. I could not predict how long
9 it would work actually. Actually, I think it worked for
10 much less time than most people anticipated.

11 THE CHAIRMAN: Do you think it would be any
12 better the way we have it here, providing that there be
13 a seven-man court and the four of them will be a quorum
14 and if it takes four for a decision, without any provisions
15 for an automatic reargument?

16 JUDGE BRUNE: If you have got four required for
17 decision, reargument should be rather futile.

18 MR. MARTINEAU: That is why we put it in, Judge.
19 We felt that if we are going to have a seven-man court, it
20 ought to sit as such. There are occasions where you
21 have less for one reason or another. We all felt that

1 it should be a full seven-man court whenever possible.

2 JUDGE BRUNE: If it is not a seven-man court,
3 I have no objection.

4 MR. ENEY: Judge Brune, would you comment on
5 the advantages or disadvantages of the straight seven-
6 man versus the straight five-man court?

7 JUDGE BRUNE: It is rather difficult to do
8 that within any reasonable length of time and without
9 possibly getting into matters that are not wholly
10 theoretical. Actually, my personal belief based on
11 experience with both sides of the court is that the five-
12 man court operates more satisfactorily. The more you have
13 to discuss and consider the matter, the more time it is
14 apt to take to reach a conclusion and the more divergent
15 views you might have.

16 MR. MARTINEAU: This Committee has found that
17 out.

18 JUDGE BRUNE: I won't argue that phase.

19 MR. ENEY: Does the reduction in workload by
20 having more judges to write the total number of opinions
21 offset the loss of time by the extra judge or is it the

1 reverse?

2 JUDGE BRUNE: Well, it probably reduces the
3 workload slightly. Now, there was a theory, I believe,
4 that when the court was increased from five to seven, that
5 the workload on each judge would be decreased by about
6 40 per cent as a matter of arithmetic. That simply isn't
7 so, because every member of the court regularly read
8 every opinion prepared in every case, whether he did
9 participate in the decision of that case or not. He
10 attended the conference on every case, and he expounded
11 any views that he had on the case, or raised any ques-
12 tions that he had, and I observed at the time some of the
13 most helpful suggestions came from those who had not
14 participated in hearing the argument, but the time
15 that it takes for that sort of work means that any saving
16 by reason of their being a larger court, with only a part
17 of it sitting, is slight and it doesn't approach the order
18 of 400 per cent. I couldn't give you an exact figure.

19 Now, a court of five can deliberate and reach
20 a conclusion, I think, a little more rapidly, and I think
21 quite effectively as the larger court. It probably isn't

1 a vital matter as to whether you have five or seven. If
2 you are going over seven, I would really be objecting
3 very loudly.

4 JUDGE WARNKEN: When the bond plan was pre-
5 sented to the Legislature, Mr. Chairman, I remember most
6 distinctly Judge Solter made considerable of the fact
7 that the smaller the number of judges, the more efficien-
8 cy, or more efficient it is, and at that time we had
9 more than five. The Circuit had eight. The Circuit
10 Court of Appeals had three. They have had three ever
11 since.

12 JUDGE BRUNE: The Fourth Circuit is now con-
13 siderably larger.

14 JUDGE WARNKEN: Yes, but Judge Solter pounded
15 that in, that very strenuous argument that we had, as you
16 remember, before the Legislative Committee at Annapolis.

17 THE CHAIRMAN: All right. Let's go on to the
18 Appellate Court.

19 Here again, we don't specify the exact juris-
20 diction, but leave it up to the Legislature to provide the
21 jurisdiction of the Appellate Court, and in Section (b)

1 provide that it be composed of not less than five. Again,
2 the Legislature could increase the number, and if the
3 situation dictated it, the Legislature could provide
4 for -- not the Legislature, but the rule of court could
5 provide that they sit in panels of not less than three
6 judges, and here the thought was that in the future, it
7 may be desirable to have panels of three judges sit,
8 not necessarily all in one place. Here again, it is a
9 very flexible setup.

10 JUDGE WARNKEN: Who makes the rule, the last
11 word in that sentence?

12 THE CHAIRMAN: The Supreme Court of Appeals.

13 MR. ENEY: It is covered by a later section.

14 JUDGE WARNKEN: I know the Supreme Court of
15 Appeals is given power to make rules, but I just didn't
16 understand that in this particular section it was intended
17 to apply to that very broad provision.

18 MR. ENEY: Judge Carter, do you think that
19 geographic representation on the Appellate Court is as
20 vital in the case of the Appellate Court as you do in the
21 case of the Supreme Court?

1 JUDGE CARTER: Vernon, I think it is a state-
2 wide court, and I think there ought to be some language
3 written into it. I didn't realize that there was this
4 qualifying phrase attached to the amendment, as the Legis-
5 lature may otherwise provide. As I recall before the
6 Judicial Committee of the Senate, the matter of districts
7 was rather fully inquired into and approved. I think
8 yes. I don't know. Maybe if it is going to be a court
9 without maximum numbers, it might present a difficult
10 fact in the picture. I think there should be some safe-
11 guard in geographical limits in the section. I am not
12 prepared to suggest any particular language. I think
13 maybe the division as set forth in the amendment would be
14 a good beginning.

15 MR. SYKES: Would the fact the court has to
16 pass on criminal sentences, for example, be a reasonable
17 approach to the geographic approach?

18 JUDGE CARTER: I would think so. There are
19 five members, I believe.

20 MR. MARTINEAU: Judge Carter, we finally dis-
21 covered a copy of Chapters 10, 11 and 12 in the Act of

1 '66 and the constitutional amendment only provides that
2 the Legislature is permitted to create an intermediate
3 Court of Appeals. That is all it says. Then it is in
4 the bills that it creates the court and provides for
5 the districting, number of judges and everything else.

6 JUDGE CARTER: Where does that leave you if
7 the authorizing bill separates the districts and the
8 amendment doesn't do so?

9 MR. MARTINEAU: The Legislature can change it
10 at any time they want.

11 JUDGE CARTER: I don't believe that was the
12 understanding.

13 JUDGE CLAPP: That, in effect, is what Judge
14 Oppenheimer suggested here, doing it another way. The
15 legislative enactment provides that it shall go into
16 effect at any time provided the constitutional amendment
17 is passed, so you do have a simultaneous districting.
18 Without that, you have to apply to the Legislature at a
19 subsequent date.

20 MR. MARTINEAU: They can't do that.

21 JUDGE CLAPP: It makes a difference, changing

1 an act of the Legislature already in existence.

2 JUDGE CARTER: They can't do that. As I re-
3 call, they said we are passing this law to implement the
4 amendment in the event the amendment is passed in the
5 November election, so that it will go into effect immed-
6 iately and permit the present administration to select
7 the personnel of the court, rather than to wait until
8 the Legislature meets to implement the amendment. This
9 court will be, assuming it will be appointed on the
10 geographical districts now created by the Legislature.

11 THE CHAIRMAN: This again would be in line
12 with Judge Oppenheimer's suggestions.

13 All right.

14 MRS. STRAUS: Mr. Chairman, may I ask, if the
15 Appellate Court were to sit in panels of three and there
16 would be one dissenting opinion, would then not the person
17 on trial be permitted to go before the Supreme Court of
18 Appeals or would they not be permitted retrial, consider-
19 ing the fact that there are five members of the Appellate
20 Court?

21 THE CHAIRMAN: I think again that whether or

1 not he could go to the Supreme Court would depend upon the
2 Legislature, and it is contemplated in the present legis-
3 lation, I think, that is pending in the referendum in
4 November, under those provisions, the Court of Appeals could
5 grant certiorari in a particular case under certain con-
6 ditions, so that I think it is contemplated that there
7 will be the right to ask to go to the Supreme Court in
8 all cases and in capital cases, I think they automatically
9 go to the Supreme Court.

10 MR. MARTINEAU: You probably wouldn't be sit-
11 ting in panels where you only have a court of five mem-
12 bers. This is provided to take care of the situation
13 where the Legislature would create additional members
14 of the court, and you might have a nine-member court, and
15 then you would be able to have three panels sitting
16 throughout the State. That is the purpose of that. It
17 is not to enable the five-man court to sit as a three-man
18 court.

19 MRS. STRAUS: That is what I had in mind.

20 JUDGE CARTER: Was any thought given to fixing
21 the maximum? I guess because you don't know what the

1 jurisdiction may ultimately be, they didn't feel justified
2 in fixing the maximum number of judges on the court.

3 THE CHAIRMAN: I don't think we have given any
4 thought to that.

5 MR. MARTINEAU: We won't want to, I don't
6 think.

7 JUDGE PROCTOR: This intermediate court is
8 supposed to soak up a lot of that.

9 MR. MARTINEAU: We want to make this appeal
10 to the Legislature.

11 THE CHAIRMAN: Judge Carter, do you feel there
12 should be a maximum number stated?

13 JUDGE CARTER: I don't have any strong feeling
14 about this one. That is just a thought that occurred to
15 me.

16 JUDGE CLAPP: I have a question. This occurred
17 to me in reading it. It is your grant of jurisdiction,
18 in both the Supreme Court of Appeals and Appellate Court
19 as compared to the grant in connection with the Circuit
20 Court and People's Court. You have in the Circuit Court
21 grant of original jurisdiction in all cases except where

1 prohibited or as otherwise provided by law. In People's
2 Court it has such original jurisdiction in cases where
3 it may be granted. There is no such limitation of any
4 kind under the present language with respect to the Supreme
5 Court of Appeals or with respect to the Appellate Court.
6 Would it not be wise to prevent the Legislature from
7 directing the Supreme Court of Appeals or this Appellate
8 Court from being directed to take jurisdiction in reck-
9 less driving cases or things of that kind? I would think
10 that the very purpose of the Constitution is to prevent
11 legislative imposition of completely inappropriate types
12 of jurisdiction to the higher courts.

13 MR. ENEY: The difficulty is you go to the other
14 extreme, and you then have to have the Legislature spell
15 out the jurisdictions. You say it shall not do it in
16 manslaughter cases, ad infinitum. It is intended to have
17 some original jurisdiction. As was pointed out, you
18 have it in removal of judges. It is also contemplated
19 you have original jurisdiction in appellate causes.

20 MR. MARTINEAU: In appellate causes, you might
21 want to provide appeals to that from State administrative

1 agencies, which I think you can argue whether that is
2 appellate jurisdiction or original jurisdiction, because
3 it doesn't arise from an appeal, appeal from the Judiciary.
4 We want to leave that flexible.

5 JUDGE CLAPP: There is no problem under the
6 present setup, is there?

7 THE CHAIRMAN: No. The Constitution doesn't
8 say anything about it.

9 MR. MARTINEAU: The Court of Appeals juris-
10 diction is not limited to appellate jurisdiction.

11 THE CHAIRMAN: Under the present Constitution.

12 JUDGE CLAPP: If I recall, I am going back in
13 history, but Judge Lerner's feeling was that the Court
14 of Appeals jurisdiction was always restricted to
15 appellate jurisdiction by implication. It is something
16 that I never went into. That was one of the reasons for
17 your difficulties with grants of writs of prohibition
18 and things of that kind in the Court of Appeals at the
19 present time. There was that feeling that it was an
20 appellate court of appeals without original jurisdiction.

21 MR. SYKES: There is a slight inconsistency.

1 4(a) provides that the Circuit Court shall have original
2 jurisdiction in all cases, and Section 2 and 3 provides --

3 JUDGE CLAPP: Except as otherwise provided
4 by law.

5 MR. SYKES: Except as may be assigned exclu-
6 sively to People's Court.

7 JUDGE CLAPP: That is changed.

8 THE CHAIRMAN: Judge Clapp, do you think that
9 it is a real danger?

10 JUDGE CLAPP: I am not sure there is a prac-
11 tical danger. Maybe my philosophy of the Constitution
12 is different than others, but it seems to me a prohibition
13 beyond which the Legislature shall not go, regardless of
14 dangers that we see here tonight and may foresee.

15 THE CHAIRMAN: Are there any other comments on
16 the Appellate Court? If not, we will turn over to Sec-
17 tion 4, which deals with the Circuit Court. I think we
18 covered part of that already.

19 JUDGE FAIRBANKS: Why was this original as far
20 as original jurisdiction may be assigned exclusively to
21 the People's Court or Appellate Court stricken?

1 THE CHAIRMAN: Because we didn't feel it was
2 necessary.

3 JUDGE FAIRBANKS: In other words, you think as
4 otherwise provided by law is sufficient?

5 THE CHAIRMAN: Yes.

6 MR. RODOWSKY: And because the Supreme Court
7 of Appeals got added to the list, too. It got added
8 to the list of possible legislative repository of
9 original jurisdiction. You end up with the whole system.

10 THE CHAIRMAN: Here is another reason, too,
11 Judge: There are and will be, I am sure, situations in
12 which the People's Court and the Circuit Court will have
13 concurrent jurisdiction, concurrent original jurisdiction
14 in certain cases.

15 JUDGE FAIRBANKS: They will in civil jurisdic-
16 tion, but would that be true in criminal or traffic?

17 THE CHAIRMAN: Possibly.

18 MR. REDDEN: My comment, Mr. Chairman, or my
19 suggestion to you, Mr. Chairman, is that in view of the
20 last sentence in the comment on the top of Page 5, refer-
21 ence to what could happen to the jurisdiction of the

1 Orphans' Court, that is to say that such jurisdiction
2 may be vested by the General Assembly in the People's
3 Court, I suggest that this would be an unfortunate cir-
4 cumstance because the People's Court as it is constitution-
5 ally provided for could embrace an area greater than one
6 county. I think it is essential to the Orphans' Court
7 jurisdiction as you presently know it, located in each
8 and every county, as a minimum. I don't think lawyers
9 should have to go between counties in order to administer
10 estates.

11 MR. ENEY: Is it necessary to put that in
12 legislature? Can't you rely on the Legislature to do
13 that if circumstances require it?

14 MR. REDDEN: I guess ultimately that is some-
15 thing that your Commission is going to have to decide.
16 I submit I think it is something that should be provided
17 for minimally in the Constitution.

18 JUDGE PROCTOR: I would certainly change the
19 effect of it, so as to not hold out the prospect of it
20 being assigned to People's Court.

21 MR. REDDEN: I don't think it makes much difference

1 in the long run where you put the jurisdiction as long
2 as you make sure the jurisdiction is going to be a county
3 by county basis. I think we may well find within our mutual
4 lifetimes that all but the really honest to goodness
5 trial functions of the Orphans' Court will be placed in
6 commissions or some similar officer. I am talking about
7 the routine business.

8 JUDGE PROCTOR: It will be handled under juris-
9 diction of Circuit Court.

10 MR. REDDEN: The judges of Circuit Court are
11 not going to spend their time signing orders. The focus
12 of it ought to be in each and every county seat.

13 THE CHAIRMAN: We perhaps did, in line with
14 Judge Proctor's comment, make a statement in our comments
15 of the danger of not providing People's Court function
16 within a territorial jurisdiction of the county. Is that
17 what you had in mind?

18 MR. REDDEN: The Orphans' Court, if the juris-
19 diction were given by the General Assembly. Mr. Eney's
20 answer is, Can't we trust the General Assembly that far,
21 and Mr. Melvin, as a former Member, maybe you ought to

1 answer that question.

2 I have one other suggestion, going back to
3 the very first item that was mentioned in the discussion
4 this evening, this question of titling for what is here
5 described as the People's Court. I would suggest to you
6 that perhaps the name, the General Court would be an
7 appropriate name, because it accomplishes all of the
8 three things that you really want to accomplish in this
9 kind of organization. It is a fresh name, a new name,
10 one that hasn't been used before, and therefore is not
11 only not associated with the form, but not associated
12 with the Communist countries or whatever else one may
13 associate the name of People's Court. Secondly, I think
14 the term carries with it the dignity that was the thrust
15 of the report of the Maryland State Bar Committee's pre-
16 sentation in Atlantic City, and thirdly, I think it is an
17 appropriate descriptive name from the general public point
18 of view because as far as they are concerned, it will
19 be the General Court. It will be the court to which the
20 average person goes or before which he appears in the
21 course of his lifetime.

1 MR. MARTINEAU: Don't you think that would be
2 a more appropriate name for the court of general original
3 jurisdiction, in other words, the Circuit Court?

4 MR. REDDEN: No; maybe I like the historical
5 aura that comes with the continued designation of our
6 court of general jurisdiction as the Circuit Court.

7 JUDGE PRENDERGAST: I suggest that is not
8 original. That is used as a court martial court. That
9 was a summary court, which is the name that would then
10 be applied to the Circuit Court.

11 MR. MARTINEAU: It is also used in Massachusetts for
12 the Legislature.

13 THE CHAIRMAN: Thank you.

14 JUDGE CARTER: Might I ask this question, if
15 it is the considered judgment of this Commission that
16 the Orphans' Court ought to be put under the jurisdiction
17 of the Circuit Court and not under the jurisdiction of
18 People's Court, is there any objection to saying so?

19 MR. ENEY: Yes. We don't want to spell every-
20 thing out in the Constitution.

21 JUDGE CARTER: How far is it you are thinking

1 that you should spell out, that you should incorporate
2 certain limitations on the powers of the court? Do you
3 have any line of demarcation between what should be left
4 and what should not be left?

5 MR. ENEY: No. I don't think it is possible
6 to draw a line. The general concept of the Constitution
7 is that it shall create the organs of government and
8 spell out broadly and very generally their power, but
9 all matter of detail and insofar as possible, all matter
10 that is subject to change, as times and conditions
11 change, should be left to the Legislature so that you
12 don't have to amend the Constitution every time circum-
13 stances dictate changes.

14 JUDGE CLAPP: Aren't some things so serious
15 they should be a matter of constitutional change?

16 MR. ENEY: Yes. That is why I asked Mr. Red-
17 den the question, doesn't he think the question of whether
18 the Orphans' Court jurisdiction should be exercised by
19 the Circuit Court or the People's Court is a matter of
20 that moment. I gather he did not. His point is whichever
21 court exercises it, ought to be on countywise basis.

1 JUDGE JAMES: I am an Orphans' Court judge and
2 now a Circuit Court judge. I feel definitely there
3 should be some delineation and the probate work of the
4 court should be confined to one court level, not partially
5 on the Circuit Court level.

6 MR. ENEY: There is no motion here that it be
7 part one and part another.

8 JUDGE JAMES: There is a possibility it could
9 be either way.

10 THE CHAIRMAN: You feel it should be a matter
11 of constitutional privilege?

12 JUDGE JAMES: One or the other, not one or.

13 MRS. BOTHE: It should be in the Constitution?

14 JUDGE JAMES: Yes, and not left to the whim of
15 the Legislature. In Dorchester in the People's Court,
16 they have jurisdiction and in the other county, Wicomico,
17 it is Circuit Court.

18 MR. ENEY: This is the general plan that is
19 envisaged for the Constitution with respect to the Legis-
20 lative Department. It doesn't appear from this draft.

21 JUDGE JAMES: What would prevent the Legislature

1 from doing it?

2 MR. RODOWSKY: If you put it in the People's
3 Court under this draft, there is provision that the
4 exclusive jurisdiction of the People's Court has to be
5 uniform statewide. As I say, I am still not sure that
6 would do it because if only part of it were put exclusive-
7 ly in the People's Court, you could still have a splitting,
8 I would think.

9 JUDGE RASIN: If your philosophy is what you
10 say it is, Mr. Chairman, then why haven't you merely
11 provided for a judiciary article which says that there
12 shall be such courts of this State with such jurisdiction
13 as the Legislature may establish, and stop there?

14 MR. ENEY: We did consider that.

15 THE CHAIRMAN: That is the way the Federal
16 Constitution is.

17 JUDGE RASIN: That is right.

18 THE CHAIRMAN: It is a matter of where you
19 are going to draw the line. I don't think anybody, or
20 very few on the entire Commission would be in favor of
21 not going any further than that, but as Vernon has said,

1 it is a question of what is of constitutional importance
2 and what isn't, and what you can leave to the Legislature.

3 JUDGE CLAPP: Aren't you doing this same thing,
4 where you give the plenary power to the Legislature to
5 fix jurisdiction?

6 MR. ENEY: Doing the same as what?

7 JUDGE CLAPP: As saying there shall be four
8 courts, period, in such matters as the Legislature may
9 determine.

10 MR. MARTINEAU: That is what we are doing. We
11 are not doing what Judge Rasin suggested, which is to
12 say there shall be such number of courts as the Legis-
13 lature may provide. The reason we don't want to do that,
14 it seems to me, is that the great movement in judicial
15 reform over the years has been to get away from the
16 proliferation of courts of varying jurisdictions. That
17 is why you want to write into your Constitution a limited
18 number of courts and provide throughout the State what
19 their jurisdiction shall be.

20 JUDGE CLAPP: Aren't you leaving it open to
21 the Legislature to render those courts completely nega-

1 tory by taking away all jurisdiction that they shall
2 desire?

3 MR. MARTINEAU: You can. That is simplifica-
4 tion to the extreme. We don't agree with that.

5 JUDGE CLAPP: The purpose of the Constitution
6 is to protect the extremes.

7 MR. MARTINEAU: You have to permit some
8 flexibility. We don't believe we can sit down here and
9 write into the Constitution all of those cases where you
10 may want the jurisdiction to be transferred from one
11 court to another and permit that and prohibit everything
12 else. We don't believe that we are foresighted enough to
13 be able to predict how the jurisdiction between the
14 various courts ought to be allocated.

15 MR. ENEY: It has its power under the present
16 Constitution, the jurisdiction of all the courts is
17 subject to change by the Legislature with very few excep-
18 tions.

19 JUDGE CARTER: Isn't it a fact of life that the
20 Orphans' Court, the philosophy, leaving too much to the
21 Legislature, the Orphans' Court will be abolished by the

1 Bar Association?

2 MR. ENEY: It is abolished here.

3 JUDGE CARTER: This is time and time again.
4 The Legislature will not go along with that because of
5 political considerations, about three of them in each
6 county. They put the pressure on the representatives,
7 and they don't abolish them. Now, if you leave this com-
8 pletely open, this matter of the Orphans' Court --

9 MR. ENEY: It is not open.

10 MR. MARTINEAU: It is assigned to the Circuit
11 Court by the Constitution.

12 MR. ENEY: You have got to keep in mind that
13 the judicial power of the State, which means the entire
14 judicial power of the State is vested in a four-tier
15 judicial structure. There isn't any room for Orphans'
16 Court or the Orphans' Court can't be created by the Legis-
17 lature.

18 JUDGE CARTER: What I am trying to say is this.
19 Won't there be political consideration, rather than
20 matters of what is proper and best and leave it open as
21 to whether it goes to the People's Court or Circuit Court?

1 MR. ENEY: The Legislature can do that now.
2 The Legislature can and has shifted jurisdiction between
3 Orphans' and Circuit Court. Circuit Court has power to
4 administer estates in certain cases. That is by statute.

5 JUDGE CARTER: Would it be better to limit
6 that in reference to the Orphans' Court and put it in
7 either one or the other?

8 THE CHAIRMAN: I don't know how you could do
9 it.

10 JUDGE CARTER: I think political considerations
11 will get into the picture as to whether it goes to the
12 Circuit or People's Court.

13 MR. ENEY: This is not before us now. It is
14 inherent. If the legislative article comes out the way
15 we are trying to make it come out, the Legislature will
16 not be able to pass laws for this, that and the other
17 county and make different rules in the different counties,
18 so what you are talking about would mean that the Legis-
19 lature on a statewide basis would say the Orphans' Court
20 jurisdiction is going to be in the People's Court
21 statewide or is going to be in the Circuit Court statewide.

1 What is wrong with that?

2 JUDGE CARTER: I feel somewhat like Judge
3 Clapp. I think there ought to be certain limitations
4 written in here on matters of basic importance, and matters
5 that might be influenced by political considerations and
6 not left wide open to the Legislature.

7 THE CHAIRMAN: Judge Carter, how would you do
8 that with respect to the Orphans' Court?

9 JUDGE CARTER: I would make a judgment as to
10 which place it ought to go and write it in the Constitu-
11 tion.

12 MR. ENEY: It is not that simple, because you
13 could then have to spell out what jurisdiction you are
14 talking about when you speak of Orphans' Court jurisdic-
15 tion, you see.

16 JUDGE CARTER: Probate.

17 MR. ENEY: You have to spell out what you are
18 about
19 talking/when you say probate jurisdiction.

20 JUDGE CARTER: What they now have.

21 MR. ENEY: We want to get away from that. We
22 don't want to incorporate in the Constitution what is now

1 law.

2 JUDGE CARTER: What is the difference between
3 using probate and original jurisdiction?

4 MR. ENEY: Original jurisdiction has a much
5 more significant meaning than probate jurisdiction. Is
6 the jurisdiction exercised by the Circuit Court in the
7 administration of the estate of a decedent a probate
8 jurisdiction?

9 JUDGE BRUNE: May I suggest the administration
10 of the People's Court is not administrative.

11 MR. ENEY: That is right, guardianships and
12 many other things.

13 JUDGE PROCTOR: I would like to raise one
14 question which I think is fundamental on this one aspect:
15 It seems to me that you ought to say in the Constitution,
16 the Supreme Court is the Supreme Court. The way this is
17 drawn, as I see it, the Legislature could turn topsy
18 turvy and make the Appellate Court the highest court if it
19 saw fit and make the Supreme Court the intermediate court.

20 THE CHAIRMAN: As they can now.

21 JUDGE PROCTOR: That doesn't make it right.

1 That is what we are trying to do, improve the present
2 condition.

3 MR. ENEY: Judge Proctor, this suggestion
4 intrigues me, if I may go back to it. You would say in
5 Section 2 (a), I take it, something to the effect that
6 the Supreme Court of Appeals shall have appellate juris-
7 diction and such other jurisdiction as may be provided
8 by law and shall be the Supreme Court in the judicial
9 structure of the State or something like that?

10 JUDGE PROCTOR: Final court.

11 MR. ENEY: We can't say that because the
12 intermediate court may be final in a given case, or the
13 Circuit Court may be.

14 JUDGE PROCTOR: Your thought in general is
15 what I have in mind.

16 MR. ENEY: You would merely characterize it
17 as the top of the structure?

18 JUDGE PROCTOR: The top court so the Legislature
19 can't decide they like the five members of the Appellate
20 Court and they will make them the highest.

21 JUDGE BRUNE: You can do it by inserting the

1 words, shall be the highest court of the State.

2 THE CHAIRMAN: That carries out your idea?

3 JUDGE PROCTOR: Exactly.

4 THE CHAIRMAN: When we get to People's Court,
5 we say, they shall be the lowest court.

6 I think we have covered the Circuit Court,
7 except for the composition of it.

8 JUDGE WARNKEN: Before you get away from that,
9 Mr. Melvin, while Judge Brune and I were kidding each
10 other, I suggested People's Court could be called the
11 Commons Court, and he said, Actually you could call it
12 the Court of Common Pleas. That is not a bad idea, Court
13 of Common Pleas.

14 JUDGE BRUNE: I think a better name could be
15 found.

16 JUDGE WARNKEN: That would get away from this
17 name, People's Court, which has not pleased everybody.
18 The Court of Common Pleas wouldn't make it conflict with
19 any of these other named courts that you would have.

20 MR. ENEY: Maybe you would like the English
21 name, Court of Petty Sessions.

1 JUDGE WARNKEN: As far as I am concerned, it
2 is quite agreeable to me. I would like to call things
3 by their real name.

4 JUDGE BRUNE: How about just Court of Sessions?

5 MR. ENEY: I think that is what Judge Fairbanks
6 suggested.

7 JUDGE FAIRBANKS: That is right.

8 THE CHAIRMAN: Does anyone have any comments
9 on Subsection (b), of Section 4? This, I believe, carries
10 out the great majority of the opinions of the State
11 Bar Committee, which is working with us on this article.

12 JUDGE RASIN: Is there any provision in here
13 as to election of Circuit Court judges, as to whether
14 they would be elected from individual counties?

15 MR. MARTINEAU: It is provided they be elected
16 from the individual county.

17 THE CHAIRMAN: That comes a little later, Judge
18 Rasin.

19 JUDGE RASIN: I will save my comment for that.

20 THE CHAIRMAN: Now, we come to the People's
21 Court, the Court of Sessions, or whatever we are going

1 to call it.

2 The way this is worded, it would allow the
3 type of People's Court organization proposed by the
4 State Bar Association and adopted in principal at its
5 recent meeting in Atlantic City. It contemplates that
6 in some areas of the State it may not be necessary to
7 have a court in each county, but it doesn't foreclose
8 that from being done by the Legislature.

9 JUDGE FAIRBANKS: Mr. Chairman, may I ask a
10 question? In Subsection (a) you state, jurisdiction
11 vested exclusively in the People's Court shall be uniform.

12 Why do you use the words, exclusively? Why
13 don't you simply say the jurisdiction vested in the People's
14 Court shall be uniform throughout the State? Isn't the
15 purpose of the reform at this level certainly to make
16 what is now a very ununiform system uniform and why would
17 it be necessary to imply that the jurisdiction which was
18 concurrent would be nonuniform?

19 MR. RODOWSKY: That is the purpose, so that in
20 a metropolitan area, the concurrent jurisdiction could go
21 to a higher dollar amount if the Legislature desired than

1 in another area.

2 JUDGE FAIRBANKS: I am not sure that that is
3 necessarily a sound principle. If you are going to have
4 a People's Court which is divided into districts and
5 possibly contemplating more than one county, why is it
6 necessary to vary the civil jurisdiction, which is really
7 all you are talking about when you are talking about
8 varying, because you certainly couldn't have different
9 criminal jurisdictions, and you certainly couldn't have
10 different traffic jurisdiction, so what, really, all you
11 are talking about is your civil jurisdiction. I don't
12 see any logical reason, if you are going to upgrade the
13 People's Court and put qualified people in them through-
14 out the State why the jurisdiction civilly should not be
15 the same throughout the State. As I recall, we recom-
16 mended from our court, and the Case Committee recommended,
17 a uniform limit of jurisdiction, which, as I recall, was --
18 I don't believe the Case Committee did pick/^{up}that recommenda-
19 tion. We recommended \$5,000 straight across the board,
20 exclusive, up to a thousand, et cetera. I don't suggest
21 that we get into that in this Constitution, but my point

1 is, if there is going to be a uniform system, then the
2 jurisdiction ought to be uniform.

3 MR. MARTINEAU: Judge, the State Bar did
4 recommend a statewide exclusive jurisdiction, but also
5 recommended, as we do here, a variable concurrent juris-
6 diction, depending upon circumstances.

7 JUDGE FAIRBANKS: That applies to civil only,
8 if I am not mistaken. I don't see how. The only other
9 concurrent jurisdiction you have is as Mr. Eney suggested
10 a moment ago, a man may demand a jury trial, and there-
11 fore go to Circuit Court in either a traffic or criminal
12 case. Certainly, you are not going to imply he can do
13 that in one county and not another. Therefore, that
14 jurisdiction will be uniform. All you are talking about
15 is civil jurisdiction, in effect. This is the only place
16 where you have an opportunity to have it ununiform.
17 There I don't see the need for it. I don't think it
18 should be, since you are revising the system in its en-
19 tirely, why you shouldn't have it uniform throughout the
20 State. That is one of the things most needed in my humble
21 opinion in the whole change of judicial structure, is the

1 making uniform the lower court structure.

2 THE CHAIRMAN: Do you understand what Larry
3 said about the concurrent jurisdiction?

4 JUDGE FAIRBANKS: Yes, but maybe I am not
5 making myself clear. In the way it is stated here,
6 jurisdiction vested exclusively in the People's Court shall
7 be uniform, the implication being concurrent jurisdiction
8 is not going to be uniform.

9 MR. RODOWSKY: The implication is that is a
10 legislative choice.

11 JUDGE FAIRBANKS: All they refer to is a mone-
12 tary matter. Why don't you simply say jurisdiction vested
13 in the People's Court should be uniform in all districts
14 or even simpler yet, People's Court shall have original
15 jurisdiction in such cases as provided by law, which juris-
16 diction shall be uniform.

17 MR. RODOWSKY: It is a question of who makes
18 the judgment. In other words, your language requires
19 uniformity across the board, by constitution. This leaves
20 the judgment as to whether concurrent jurisdiction can
21 vary between districts with the Legislature.

1 JUDGE RASIN: Why should it vary?

2 MR. RODOWSKY: The question of whether the
3 legislative, if it is a legislative judgment, the question
4 of whether it is a good or bad thing to require uniformity
5 completely across the board, whether there might not be
6 a need in a metropolitan area for a greater concurrent
7 jurisdiction than in some other areas of the State so that
8 you would want to permit a larger concurrent jurisdiction
9 in some sections.

10 MR. MARTINEAU: I think the feeling is the
11 desire for uniformity isn't necessarily, isn't the same
12 when you are talking about concurrent jurisdiction, and
13 we don't want to foreclose the meeting of different
14 problems in different parts of the State, where you might
15 have a large backlog in one, on the Circuit Court level,
16 where you have jury trials and such things, and you might
17 want to open up the ability of people to go into the
18 district or to the People's Court and have it tried. Then
19 you can only do that if you can expand easily the concur-
20 rent jurisdiction.

21 JUDGE PROCTOR: Isn't the answer in the metro-

1 politan areas, they go to the People's Court but in the rural
2 areas they go to the Circuit Court?

3 JUDGE FAIRBANKS: I think that is right,
4 Judge Proctor.

5 MR. INVERNIZZI: I don't see, really, any
6 purpose other than probably steering cases from one court
7 to another court. These courts are supposed to be at the
8 level contemplated. I think the monetary jurisdiction,
9 though concurrent, should be the same.

10 JUDGE FAIRBANKS: It should be uniform.

11 MRS. BOTHE: I was interested in Paul Schlitz's
12 question at the beginning of this discussion, asking us
13 whether we considered it a three court, three-tier system
14 with the People's Court and Circuit Court jurisdiction
15 combined. I may have missed the meeting. I don't remem-
16 ber when we did consider it particularly. I wondered
17 if he would comment a little further on why he thought that
18 might be something we should have considered more thorough-
19 ly.

20 MR. SCHLITZ: Well, it seems to me that this
21 is the weak link in the plan here. You are giving the

1 Circuit Court jurisdiction, original jurisdiction, and
2 then you are setting up another court next to it and
3 saying half of it is going to go over here. This means
4 that you are going to have two sets of courts, two sets
5 of clerical offices and all the attendant difficulties
6 with those. It seems to me that if my assumption is
7 correct, one, that the clerks' offices will be under the
8 supervision and control of the courts in the new plan,
9 and two, that they will be modernized, then those offices
10 ought to handle all the paper work for the People's Court.
11 We are living in an age where the more paper work you
12 have, the more efficiently you can handle it. I think
13 this ought to apply, too. The more paper work, the more
14 efficiently you can handle it. For instance, the court
15 has just adopted a rule to use mail service. People's
16 Court has been using this for 25 years. I can envision
17 where 80 or 90 per cent of service in future cases will
18 be by mail. It would seem ridiculous to have two offices
19 doing the same job, separated a couple of blocks apart.

20 MR. MARTINEAU: It is not precluded that this
21 could all be done by the same staff of people.

1 MR. SCHLITZ: Why not then make this a division
2 of the Circuit Court so that the administrative end will
3 be handled in one office and that the judges will be
4 under the control of the one circuit chief judge?

5 MR. ENEY: That is what is in this draft.

6 MRS. BOTHE: Would the judges under this pro-
7 posal be interchangeable between Traffic Court cases and
8 murder cases?

9 MR. SCHLITZ: No. I don't think you could
10 sell that. In Illinois, the lower court judge, I think,
11 has jurisdiction up to \$5,000, and he operates out of
12 the Circuit Court there. It seems to me this is the
13 better way to do it. You might have the jurisdiction of
14 the judge slightly higher than the jurisdiction so the
15 judge could be moved between one court and another. I
16 can't see the reason why a judge who is handling cases
17 in the People's Court where the jurisdiction is three or
18 four thousand dollar capacity in a non-jury case for three
19 or four thousand dollars.

20 MR. MARTINEAU: We assume there will be the
21 vertical and horizontal moving around of the judges.

1 MR. SCHLITZ: Is it anticipated People's
2 Court judges can serve in the Circuit Court?

3 MR. MARTINEAU: Why?

4 MR. SCHLITZ: Why not make this a division of
5 the Circuit Court?

6 MR. MARTINEAU: When you talk about procedures,
7 one of the purposes in having a court by a different
8 title and different names, you will have completely
9 different procedures, much less formal, without a lot of
10 the formalities that go into a Circuit Court proceeding,
11 and we felt that the way to achieve this would be to have
12 a separate court rather than trying to establish this
13 by merely a division of the Circuit Court in which you
14 would have to have, wherever you are talking about the
15 Circuit Court, make an exception for the division of the
16 Circuit Court that handles cases only involving so much
17 money.

18 JUDGE FAIRBANKS: I don't think Mr. Schlitz,
19 that you are going to save yourself anything on adminis-
20 tration by just making it a division of the Circuit Court.
21 You will still have to have the same number of people

1 handling the papers, so that if the idea of making it a
2 division of the Circuit Court is to make it more
3 efficient and save money, I don't believe this would
4 make any difference one way or the other. If you had it
5 all in the Circuit Court, I would expect that very shortly
6 there would be a division, as you say, which would be
7 the People's Court division, which would have an assistant
8 clerk, which would, in effect, be the same as the clerk
9 of People's Court is now and have precisely the same
10 mechanical and paper functions going on. I don't see how
11 you would save anything. To me, there is a lot of
12 merit in having a separate court at a lower level, simply
13 because this is the nature of things. I don't know of any
14 other jurisdiction which has a court of trial jurisdic-
15 tion at the bottom, so to speak, that is divided into
16 divisions which would contemplate what you are talking
17 about now. The Court of General Sessions in the District
18 of Columbia does have a small claims branch, but that is
19 within its own limited jurisdiction, but there still is a
20 district court, which serves as the Court of General
21 Jurisdiction for the District of Columbia.

1 THE CHAIRMAN: Thank you, Paul.

2 JUDGE NILES: Mr. Chairman, may I repeat what
3 I said, but I will not belabor the point. It seems to
4 me that these courts should be divided into divisions
5 rather than districts. That is a matter of terminology,
6 perhaps. You can't divide a court into districts. This
7 applies both to the Circuit Court and People's Court.
8 States are divided into districts, and the wording, I
9 think, should be changed to make it divisions for the
10 respective districts. I would make another point, if I
11 may: I suggest for your consideration again that the
12 Circuit Court is a very bad name for this court. It is
13 the historical name, I agree, the historical name of
14 several courts. It seems to me a Superior Court, which
15 is also a traditional name in our jurisprudence the proper
16 name for what is here called the Circuit Court.

17 THE CHAIRMAN: Thank you, Judge Niles.

18 The next section we have is titled, Commis-
19 sioners, and by providing for commissioners, the thought
20 was that they would take the place of the present Committee
21 magistrates that are found throughout the State, and

1 because they do have certain functions which seem to be
2 judicial in nature, we felt that it was necessary and
3 wise to provide for them in the Judicial Article.

4 JUDGE PROCTOR: Your Committee sought to
5 suggest to Senator Tydings that he adopt your language.

6 JUDGE FAIRBANKS: Mr. Chairman, I hate to keep
7 talking, but this happens to be getting down into the
8 areas which I know something about. First, since we are
9 talking about name changes altogether, I would recommend
10 we do not call them Commissioners, but call them Committee
11 magistrates, which is what they are. This will get away
12 from the old justice of the peace, which has an unfor-
13 tunate connotation in some instances. That is my one
14 suggestion. The other is that by all means it is essen-
15 tial in my view that the control of these Committee
16 magistrates be in the Judiciary, either in the People's
17 Court or in the Circuit Court. In many of the jurisdic-
18 tions, in my own, for instance, at the present time, the
19 justices of the peace are practically, for all practical
20 purposes, controlled by the police department, which is
21 a very unfortunate situation, to say the least.

1 Now, they do, I believe, exercise a portion of
2 the judicial power of the State of Maryland. They
3 have the power to commit a man. They have the power to
4 set bail. These are judicial functions. They should
5 be under the control of the Judiciary. Right now, we
6 can't tell the justice of the peace in Montgomery County
7 what to do. In other words, we can't get any uniformity.
8 We can't get any real control of them. We can suggest.
9 They try, as best they can, to follow our suggestions,
10 but I make this as a point.

11 As far as the preliminary hearings are con-
12 cerned, Judge Rasin, I would not ever suggest that the
13 Committee magistrate ought to hold the preliminary hear-
14 ing. This is a function of the trial magistrate, so to
15 speak, or the People's Court. I would strongly oppose
16 any suggestion that the Committee magistrates who would
17 have the right to hold preliminary hearings in felony
18 cases.

19 THE CHAIRMAN: Judge, you will notice that we
20 have provided here, that the Commissioners or Committee
21 magistrates be appointed by the senior resident judge of

1 the Circuit Court. Now, how do you feel about that as
2 opposed to having People's Court appoint them directly?

3 JUDGE FAIRBANKS: When I came in here tonight,
4 I had some reservations about that. Listening to the
5 discussion, where it looks like People's Court and
6 Circuit Court may be interchangeable to some extent, I
7 wouldn't have any objection. I notice you have no provision
8 for a chief judge of the People's Court. I would assume
9 from that the resident chief judge of the Circuit Court
10 will be the administrative officer for the trial courts
11 in that jurisdiction. Therefore, I would think he would
12 be the logical person to have the control.

13 MR. ENEY: One chief judge throughout the
14 State.

15 JUDGE FAIRBANKS: One for the entire State?

16 THE CHAIRMAN: Yes, which could result in as-
17 sistance.

18 JUDGE FAIRBANKS: One administrative judge? Is
19 he going to be able to do that? That is quite a job.

20 THE CHAIRMAN: With enough assistance he could.

21 JUDGE FAIRBANKS: Who is going to be the on-the-

1 spot boss, so to speak, in the county. Take our county
2 again. I hate to keep referring to it. It is the only
3 one I know about. We now have eight Circuit Court
4 judges, Lord help us. We have got three People's Court
5 judges, and they are talking about giving us a fourth.
6 There are twelve judges. Somebody has got to be the
7 boss. What are you going to do?

8 THE CHAIRMAN: Under this setup, the chief
9 judge of the Circuit Court for the State would be at the
10 top, and he would have various assistants, one of whom
11 could be the senior judge in our county, for example.

12 MR. ENEY: Or an administrative officer.

13 JUDGE FAIRBANKS: We argued this before the
14 Case Commission when I appeared before them, and we
15 recommended that the administrative person be a judicial
16 officer. The Case Commission, I believe, recommended an
17 administrative officer. I don't think it makes a lot of
18 difference as long as you have got somebody who is sub-
19 ject to the control of the Judiciary who is responsible
20 for the administration.

21 MR. ENEY: The concept I was trying to get

1 your reaction to is that one bossman for the appellate
2 courts, one bossman for the trial courts.

3 JUDGE FAIRBANKS: This is statewide?

4 MR. ENEY: Yes.

5 JUDGE CURLEY: On the appointment of these
6 Commissioners or Committee magistrates, actually the
7 judges who are going to use them are going to be the
8 People's Court judges, if the senior resident Circuit
9 Court judge appoints these people, but if we are unhappy
10 with, say, a different Committee magistrate who just isn't
11 doing the job, we are going to have to prevail upon that
12 senior resident Circuit Court judge to remove him.

13 THE CHAIRMAN: That is right. That is why I
14 asked how you judges felt about it particularly. We
15 don't have any strong feeling about it among the Committee.

16 JUDGE CURLEY: In our county, we have had
17 about a year and a half experience with it, and in one or
18 two situations we were not, let's say we were less than
19 happy with the performance, but we had no power to remove
20 them. That is, I had no power to remove them because
21 they were appointed by the governor. I think it is good

1 to take this out of the appointive power of the governor
2 so that the judges who actually would work with them and
3 know what they are doing or not doing can remove them.

4 JUDGE FAIRBANKS: Mr. Eney, in answer to your
5 proposition to me, I don't see any reason why the system
6 you suggest isn't a good one. The only thing is we have
7 got several large metropolitan counties in the City of
8 Baltimore. I don't think one administrative judge neces-
9 sarily is going to be able to keep his finger on that
10 plus twenty or sixteen or eighteen, or whatever the number
11 is in other counties. I think, therefore, you would
12 have to have someone in each of the larger areas who
13 would be responsible.

14 MR. ENEY: Section 7, on Page 7. Refer to
15 that.

16 MRS. BOTHE: We are only talking about what
17 needs to go into the Constitution.

18 MR. MARTINEAU: We provide in 7 and 8 that the
19 court can adopt rules for the operation of the judicial
20 system and that the chief justice is the administrative
21 head and working through the chief judges, has control

1 over the entire operation of the judicial system. We
2 drafted it this way so that in the future, by rule of
3 court, provisions can be made for setting up various
4 administrative offices in some of the larger counties and
5 Baltimore County where needed; if you need a local judge,
6 who has to be the man on the spot, to be the administra-
7 tive head, that can be provided for. We are trying to
8 make this as flexible as possible so that all of these
9 problems can be met when they arise.

10 JUDGE FAIRBANKS: We have got even a little
11 away from what I referred to in the first instance, and
12 that is the Commissioners or Committee magistrates ought
13 to be subject to the control of the Judiciary, and where
14 it is in the hierarchy really doesn't make too much dif-
15 ference.

16 MR. RODOWSKY: It is appointment at the pleasure
17 of the senior resident judge. It is tremendous control.

18 MR. MARTINEAU: We put that in only because in
19 the beginning, at least perhaps for some time, we may
20 have a number of counties that don't have a People's
21 Court judge, and we will have a Circuit Court judge in

1 each county. We felt that the judge who may have three
2 or four counties under his control would be familiar
3 enough with the people to appoint the Commissioners.
4 That is why we put it in the Circuit Court.

5 JUDGE FAIRBANKS: There will certainly have
6 to be a Committee magistrate in every county, more than
7 one probably.

8 JUDGE CARTER: Who appoints the assistants,
9 the chief trial judge or chief justice?

10 THE CHAIRMAN: Chief justice.

11 JUDGE PRENDERGAST: May I suggest bail set
12 by Commissioners who are not lawyers, the confusion in
13 the Criminal Court would be beyond description.

14 JUDGE RASIN: That is the reason I asked the
15 question, who is going to hold preliminary hearings under
16 this setup.

17 MRS. BOTHE: Baltimore City wouldn't have
18 Commissioners. At least, there wouldn't be any idea of
19 it. It would be just in the sparsely populated areas
20 where there are no People's Court judges.

21 THE CHAIRMAN: Under this arrangement, Judge

1 Rasin, I think it is contemplated preliminary hearings
2 would be held by the People's Court judges.

3 JUDGE RASIN: How can you set bail? Do you
4 mean you will hold the people, set bail for them, whether
5 it is reasonable cause to hold them?

6 THE CHAIRMAN: We contemplate we would be
7 doing the same thing the Committee magistrate does now.

8 MR. ENEY: In other words, you set bail for
9 a person before the People's Court.

10 JUDGE FAIRBANKS: For any hearing?

11 MR. ENEY: Preliminary or any other hearing.

12 JUDGE FAIRBANKS: Assault and battery gives
13 you justice of the peace, and he sets bail or lets you
14 go on personal bond, whatever it is. My argument is,
15 these people who do this should be subject to control
16 of the Judiciary, not the police department, which is
17 the way it is in some counties now.

18 JUDGE JONES: The Commissioner setup would not
19 apply to Baltimore City. What would apply?

20 MRS. BOTHE: The same thing that does now. In
21 other words, this would only prevail where you have

1 Committee magistrates setting bail and issuing arrest
2 warrants right now; presumably in the future, sometime,
3 we might not have any of it.

4 JUDGE JONES: We have it in Municipal Court
5 now. It was eliminated?

6 MR. ENEY: No. It couldn't be called People's
7 Court.

8 JUDGE NILES: I had occasion to look into the
9 Tydings Bill recently. The Tydings Bill abolishes the
10 name United States Commissioner and substitutes the name
11 United States, or Federal, I forget which, Magistrate,
12 and there are deputy magistrates. They have the provision
13 in that bill that those Committee magistrates should be
14 Members of the Bar. I simply say that for the information
15 of everybody.

16 JUDGE WARNKEN: They try cases, too.

17 JUDGE NILES: Yes. One of the troubles is
18 with the old justice of the peace, they are not Members
19 of the Bar.

20 MR. MARTINEAU: They shall, provided by rule
21 of the court, with the expectation that the court insists

1 that they be Members of the Bar, but also permitting
2 them not to be or permit the court to authorize them not
3 to be, if certain circumstances may arise where it is not
4 feasible to get a lawyer.

5 JUDGE NILES: It seems to me also the name,
6 Committee magistrate, is a good one. It avoids this criss-
7 cross with Federal jurisdiction where they are abolishing
8 the name, Commissioner, and substituting Magistrate.

9 THE CHAIRMAN: Now, we are over to Page 7,
10 and here again, we provide that the head of the entire
11 system will be the chief justice of the highest court,
12 and that he will appoint an administrative judge known
13 as the Chief Judge of the Circuit Court, and the chief
14 justice can appoint such number of assistants as may be
15 necessary to enable him and the chief justice to adminis-
16 ter the courts, all of the courts in the State.

17 I think Mr. Invernizzi had some suggestions.
18 Well, we have this. It goes over to the next page. We
19 haven't gotten to that yet, concerning the rulemaking
20 power, but the thought is here that the administrative
21 judge will have some real authority, for example, deter-

1 mining and coordinating when the various judges go on
2 vacation and perhaps even the hours of court.

3 JUDGE PROCTOR: This does away with the old
4 idea of seniority of the chief judges?

5 JUDGE CARTER: It abolishes the chief judges in
6 the circuit?

7 THE CHAIRMAN: Yes. There is really no
8 functional need for circuits as such, and the chief judge
9 of the Circuit Court could in setting up his administra-
10 tion appoint certain judges in various areas as his assis-
11 tant to assist him in administrating the courts of that
12 particular area.

13 JUDGE BRUNE: Mr. Chairman, may I offer a
14 suggestion, which I am sure is not new to your Committee:
15 Why don't you create the office of administrative judge
16 and call it exactly that? The qualifications of a good
17 administrator are not necessarily found in every judge,
18 trial or appellate, I believe. I am familiar with the
19 case of one who was head of the Judiciary of the State.
20 I know he was not a good administrator because I am the
21 person. It seems to me you are really creating here an

1 administrative judge. You are picking out some judge and
2 giving him that job to do, apparently with some feeling
3 that he won't like it for long, so you don't want to scare
4 him too bad with a fixed term of office. It seems to
5 me that ought to be a career type of job, and from what
6 the comment states, I gather that the Committee believes
7 that the work of the administrative judge, whether he
8 has that title or whether he is called Chief Judge of
9 the Circuit Court, that is going to be a fulltime job.
10 If that is so, why in the world not have a specialist
11 and call him exactly what his actual work requires him
12 to be, administrative judge?

13 THE CHAIRMAN: Would he be a judge who had been
14 selected and/or appointed?

15 JUDGE BRUNE: I would suggest that he be ap-
16 pointed in precisely the same manner as the judge of an
17 Appellate Court is appointed: Recommended by the Appel-
18 late Nominating Committee. Now, there are two possible
19 questions as to the ways of handling the matter. One
20 is, you can have him serve at the pleasure of the Chief
21 Judge of the Supreme Court of Appeals. The other is

1 that you can have him subject to election on exactly the
2 same basis as any other judge. Since I have seen these
3 proposals only very recently and have not been able to
4 devote as much time since I saw them to study that ques-
5 tion, I am not sure which method is the better, but it
6 does seem to me very definite that you are creating what
7 is really a career position and that you ought to have a
8 career man for that and not have him engage in the trial
9 of cases on the side, and when he can find time to do
10 it.

11 I imagine that most judges would prefer to
12 do what they consider strictly judicial work, trying
13 cases and there will always be some pull as to the admin-
14 istrative side and judicial side if you pick a man who is
15 a judge of the Circuit Court and ask him to be an admin-
16 istrative judge.

17 I suggest that to you very earnestly as an im-
18 provement in what I consider on the whole an excellent
19 scheme, which the Committee has proposed for the Judicial
20 Article.

21 THE CHAIRMAN: Judge, just about what you

1 suggested was considered by us at one time, and we ran
2 into all sorts of problems about what would happen if
3 you picked a judge, a sitting judge, and who agreed to
4 serve as the administrative judge, and he decided that
5 after being there for four or five years that he didn't
6 like it and he wanted to go back to being a judge. In
7 the meantime, someone had been appointed in his place to
8 take over his judicial duties. We couldn't quite figure
9 out what would happen.

10 JUDGE BRUNE: I suggest you avoid that very
11 simply by not having him an ordinary sitting judge to
12 begin with. He would be appointed directly as administra-
13 tive judge.

14 MR. ENEY: Don't you freeze him then?

15 JUDGE BRUNE: What of it? You want a man for
16 a career position.

17 MR. ENEY: Do you necessarily want the person
18 who is administering the entire trial court system to do
19 it for a period of 20 years maybe? Wouldn't he tend to
20 get wedded to his own administrative methods, perhaps,
21 and might it not be desirable to move on to the times?

1 JUDGE BRUNE: From what I understand under your
2 proposal.

3 THE CHAIRMAN: Judge Niles can tell us pre-
4 cisely how it is done.

5 JUDGE PROCTOR: Doesn't Judge Reardon sit for-
6 ever?

7 JUDGE NILES: Yes. He is not only my friend.
8 He is a friend of a lot of persons present here. He
9 was, he is not now, he is down on the Supreme Court of
10 Massachusetts.

11 JUDGE BRUNE: Supreme Justice Court it is called
12 there.

13 JUDGE NILES: That is right. That is as
14 clumsy a title as Supreme Court of Appeals, I think.

15 JUDGE BRUNE: Slightly redundant, but go ahead.

16 JUDGE NILES: He has all the powers of an
17 associate judge. He has all of the administrative powers
18 that Judge Brune was mentioning. I talked to him at
19 some length about what he actually did. He said he
20 spends about two-thirds of his time in his administrative
21 duties. He spends the other third of his time in the trial

1 of cases. I said, Doesn't this administrative stuff
2 bore the, well, I won't say what I said, but, bore you.
3 He said, Yes, to some extent, but it is not as bad as
4 it sounds because there are interesting problems of all
5 sorts.

6 Now, he then, the Chief Judge in Massachusetts
7 is the head of the system, the administrative head as
8 well as the judicial head. Now, if I may comment for a
9 moment on Judge Brune's suggestion here, it seems to me
10 that there is no way, or at least I haven't heard of a
11 way that you find out who is a good administrative judge
12 except by looking over the judges that you have. I could
13 name some with whom I have served that would be excellent,
14 and some that wouldn't be any good at all. I share Judge
15 Brune's regret, or perhaps his pride, which he says he
16 is not a good administrative judge. I think the same of
17 myself. I don't want the job, but I know some judges
18 I think would be very good at it. It seems to me that
19 flexibility is a good idea in that you could serve for four
20 or five years, satisfactorily, and perhaps the Chief
21 Justice would reappoint him. Perhaps he would not.

1 Suppose he served unsatisfactorily. I think it would be
2 unfortunate to have him in for fifteen years. I think
3 there is another aspect to it, and that Judge Brune's
4 suggestion does cover. That is to say, that the judge
5 will be giving orders to other judges, and the sentiment
6 expressed at one meeting by a judge, not now present, was
7 that that person who is giving these orders should have the
8 prestige, the power and the background of the head judge
9 so he could give real orders. To come back to Massachu-
10 setts, the Chief Judge does it. It would seem to me this
11 is a pretty fair compromise, and whether you call him
12 administrative judge or not seems to be immaterial, if
13 the Chief Justice can appoint a judge to do the adminis-
14 tration, and who does it, and can be changed for cause;
15 that seems to me to cover the problem.

16 JUDGE BRUNE: May I make one or two comments
17 in reply to Judge Niles' suggestion? I have in mind pos-
18 sible qualifications for a person to be appointed adminis-
19 trative judge. He should have had some experience, either
20 as a trial judge or in court administration work. Now,
21 if he gets to doing his job badly and the question arises

1 how do you get rid of him, I think that is covered by a
2 later provision in this draft under which any judge is sub-
3 ject to removal or retirement if he falls down on the
4 job. I don't see why the administrative judge should be
5 exempt from that any more than any other judge, and I
6 furthermore think that the provision for retirement or re-
7 moval when the judge is unable or unwilling, as the case
8 may be, to do his job or do it right, are highly desirable
9 provisions, and I think that power of removal is properly
10 based as in this draft in the highest court of the State.

11 MR. ENEY: Judge Brune, would you and Judge
12 Niles comment on the notion that the administrative judge
13 could wield more effective power by being called a chief
14 judge than by being called administrative judge, the mere
15 fact he is designated the chief judge inherently gives him
16 greater stature in issuing his quote, orders, unquote?

17 JUDGE BRUNE: Any reply, I might make to that
18 might be considered slightly indelicate in some ways, be-
19 cause for some time as far as I could make out, the actual
20 powers of the chief judge of a number of our trial courts
21 was to sit in the middle if there were three or more judges

1 present. Judge Niles, is that correct or incorrect?

2 JUDGE NILES: That is legally correct, but
3 actually, I pride myself. I think that the title, Chief
4 Judge, does give more power and I am backed up in that
5 by Judge Reardon, who says that is, in fact, within his
6 experience.

7 JUDGE BRUNE: Suppose you called him Chief
8 Administrative Judge?

9 JUDGE NILES: I think he wants to be a judge,
10 and I don't think you can pick an administrative judge
11 right out of the bag.

12 JUDGE BRUNE: If you pick him and put him in
13 this job, he is going to be an administrator as long as
14 he is in it according to the Committees on Predictions.

15 JUDGE NILES: That is right, for fifteen years
16 and then he can go back for trial. I think we are trying
17 to forget the same thing, only with differences in detail.

18 THE CHAIRMAN: Let's go on to the rulemaking
19 power.

20 MR. SCHLITZ: Before you leave this, in regard
21 to the Illinois system or the Philadelphia system, in one

1 of those systems, the judges on the court recommend
2 to the chief judge who should be appointed the administra-
3 tive judge, and in that way, they are saying in effect,
4 This is the fellow we want to run the show, and this is
5 not done on any term basis. This is a possibility.

6 THE CHAIRMAN: I am sure that would happen
7 anyway.

8 JUDGE PRENDERGAST: Before you leave Section 7,
9 may I inquire whether this contemplates that two judges
10 of any circuit may detach the circuit judge and have him
11 hear traffic cases and parking ticket cases and that kind
12 of case?

13 MR. ENEY: There isn't a chief judge of the
14 circuit. I am not sure. Isn't that what you said?

15 JUDGE PRENDERGAST: Could a Circuit Court judge
16 be ordered to go temporarily to the Housing Court, which
17 is part of People's Court?

18 MR. RODOWSKY: Yes. Under this, he could.

19 MR. MARTINEAU: That is the way you punish a
20 judge without actually removing them.

21 JUDGE JONES: More seriously , the People's

1 Court judge could be sitting on the Supreme Appellate
2 Court.

3 MR. ENEY: He could be theoretically.

4 JUDGE JONES: It is written in here.

5 MR. ENEY: No. It gives the power to the
6 chief judge.

7 JUDGE JONES: Chief Justice of the Supreme
8 Court of Appeals shall have the power to assign temporarily
9 any justice or judge of the City to sit in any court of
10 the State.

11 THE CHAIRMAN: That is right.

12 MR. ENEY: Has the power.

13 JUDGE JONES: So that the People's Court judge
14 could sit on the Supreme Appellate Court. Is that the
15 judgment of this Commission?

16 THE CHAIRMAN: We don't think that that is like-
17 ly to happen.

18 JUDGE JONES: I am not discussing whether it
19 is likely to happen. I am asking if it is the judgment
20 of the Commission that it is wise to put that in the Con-
21 stitution.

1 THE CHAIRMAN: We think it is not unwise be-
2 cause of the qualifications of all the judges in the
3 entire system. They are going to be the same.

4 JUDGE PRENDERGAST: Don't you think this would
5 downgrade the Circuit Court to the point where it may be
6 difficult to get judges to go on the bench? I think it
7 would.

8 MR. ENEY: We were hoping it would upgrade
9 the People's Court to the status of the Circuit Court.

10 JUDGE PROCTOR: Isn't it bound to have the
11 opposite effect?

12 MR. ENEY: Why?

13 JUDGE PROCTOR: The tendency to meet in the
14 middle?

15 MR. MARTINEAU: I don't think Judge Thomsen
16 has been downgraded that he hears Traffic Court cases frees
17 the Baltimore-Washington court way.

18 MRS. BOTHE: The Court of Appeals hasn't been
19 downgraded because her court judges sit with her on
20 occasion.

21 MR. MARTINEAU: Vice versa, nor have the Court

1 of Appeals judges been downgraded.

2 JUDGE CARTER: In this extreme case that is
3 pointed out where the chief justice has power to assign
4 a People's Court judge to sit on the Supreme Court of
5 the State, what is the advantage of having that authority
6 written in the Constitution?

7 MR. MARTINEAU: The same advantage as in the
8 present one where you permit a Circuit Court judge to be
9 assigned to sit on the Court of Appeals. Sometimes you
10 need a judge.

11 JUDGE CARTER: As now set up, that is one-tier
12 difference. Here you have got three-tier difference.

13 MR. MARTINEAU: It depends on the quality of
14 the particular judge, it seems to me.

15 THE CHAIRMAN: Is it your thought, Judge Carter,
16 that it ought to be restricted to a particular level?

17 JUDGE CARTER: I would think so. I don't see
18 any advantage in that.

19 MR. ENEY: Do you mean that, or do you mean
20 just that People's Court judge is in a different category?
21 In other words, would you prevent a Circuit Court judge

1 from sitting on the Supreme Court or a judge of the
2 Supreme Court from trying a case as Judge Hammond used
3 to do frequently?

4 JUDGE CARTER: I don't think it would be good
5 to restrict appellate judges to appellate work and trial
6 judges to trial work. I think there is a danger in what
7 Gil Prendergast said: If you have this thing in a whole-
8 sale permissive shift around that you may get an impres-
9 sion that you are certainly not elevating Circuit Courts.

10 JUDGE PROCTOR: Is this done in other juris-
11 dictions which have the unified court system, New Jersey?

12 THE CHAIRMAN: I think so.

13 JUDGE PROCTOR: New Jersey, Illinois and
14 others?

15 THE CHAIRMAN: I don't know in all of those
16 particular ones that you mentioned, but I think it is
17 true that it is done in the four-tier court States. Isn't
18 that right?

19 MR. MARTINEAU: I believe so.

20 MR. SYKES: Are there any instances of where
21 it has been used to forestall a dissent in the Supreme

1 Court of Appeals by assigning a judge to the People's
2 Court or the General Trial Court on a particular case?

3 JUDGE NILES: Mr. Chairman, would this problem
4 be solved by putting in the usual provisions, subject
5 to such rules as may be adopted by the Supreme Court or
6 subject to law? That is, to say, that the Legislature
7 could say you couldn't put a judge of the present Court
8 of Appeals into the People's Court or you couldn't put
9 a judge of the People's Court into the Court of Appeals.
10 That is, work it out by statute rather than by constitu-
11 tion?

12 THE CHAIRMAN: That would be one possibility.
13 As I said, the fact that we don't make any affirmative
14 comment about any of the suggestions doesn't necessarily
15 mean that we may not adopt them or contrarywise, we may
16 not consider them wise.

17 Let's go to the rulemaking power.

18 MR. ENEY: Could we come back to this a moment?
19 I would like to clarify one thing. Judge Prendergast,
20 would you feel that the limitation on the assignment of
21 judges should only be such as to have the People's Court

1 judges in one category and all the other judges in
2 another, or would you put each in his own tier?

3 JUDGE PRENDERGAST: I would have them in dif-
4 ferent tiers and not interchangeable because I think that
5 what is known as Greacham's Law in Economics would apply
6 to the judges. As you know, Greacham's Law is a law
7 that where you have two kinds of currency, one better and
8 one inferior, inferior drives the better out, gold and
9 silver. I think that is what is going to happen under
10 Paragraph 7. You are going to wind up with a lower cate-
11 gory of judge in both benches. We know we had the same
12 lofty ideas when we first dreamed up the Municipal Court
13 in 1953. It came to fruition eight years later. I won't
14 comment on the results, but I am afraid that is what you
15 are going to run into. The People's Court should have its
16 own definite jurisdiction, and the judges ought not serve
17 on any other court. The Circuit Court should have its
18 definite jurisdiction, not subject to service on the
19 People's Court, but subject to service on the Appellate
20 Court or the Court of Appeals, as we have today, in an
21 emergency, not as a steady diet. If you don't do that, I

1 think you will wind up with a vastly inferior Superior
2 Court in certain parts of the State.

3 MR. ENEY: You would isolate the People's
4 Court judges in one category and all the other judges in
5 the other category?

6 JUDGE PRENDERGAST: Yes.

7 MR. ENEY: Would you consider it desirable
8 to permit assignment up but not down?

9 JUDGE PRENDERGAST: No, not at People's Court
10 level.

11 MR. ENEY: Would you permit free assignment
12 of an appellate judge to sit in the Circuit Court?

13 JUDGE PRENDERGAST: Yes; as Judge Hamilton and a
14 few others have done in the past with good results.

15 MR. ENEY: Your only point, really, comes to
16 the idea that the People's Court judges ought to be a
17 different breed, a separate group, and they should not
18 be interchangeable on the matter of assignment with the
19 other judges?

20 JUDGE PRENDERGAST: I think so.

21 JUDGE CLAPP: I am not sure I agree with Judge

1 Prendergast in that connection. I think the purpose
2 of the Commission here of getting the same caliber of
3 lawyer on all courts is fine if it will work. I am not
4 sure that it will work, but this People's Court or what-
5 ever the name is known is going to be the court where
6 the vast majority of the people of this State come in
7 contact with the administration of justice, and if you
8 do, I hate to use the word, segregate those judges from
9 all the rest of the judges in the State, I think you
10 automatically downgrade them to the point where you will
11 not get the respect of that court that I believe this
12 Committee is desiring and aiming at.

13 MR. ENEY: Let me ask you another question,
14 Judge Clapp, that follows that: Is this segregation of
15 judges that is to be necessary for any reason necessary
16 to be in the Constitution, or isn't this one of the things
17 that could be left to the sound reasoning and common
18 sense of the head of the judicial system of the State?

19 JUDGE CLAPP: I have a great deal more confi-
20 dence in the head of the judicial system, as I voiced
21 in the Legislature. I have more confidence in putting it

1 in the Legislature than I do in putting it in the
2 chief justice.

3 JUDGE PROCTOR: I would think he would exer-
4 cise his power as the millennium arises, and you do raise
5 the caliber of your courts of limited jurisdiction through-
6 out the State.

7 MR. ENEY: I think that was the point behind
8 this paragraph, that you would have it there, and you
9 would avoid the situation of sort of categorizing the
10 People's Court judges as a breed apart.

11 MRS. STRAUS: May I ask one question that
12 really is out of context? We have so far gone through
13 the majority of your proposals here. I am wondering if
14 you anticipate that somewhere else in the Constitution
15 there will be a specific guarantee to the individual the
16 right of appeal?

17 MR. ENEY: Right of appeal to where?

18 MRS. STRAUS: Within the judicial system.

19 MR. ENEY: There is no such guarantee now.
20 It is entirely a matter of statute by the Legislature.

21 MRS. STRAUS: Do you feel there should be such

1 a guarantee?

2 MR. ENEY: I don't know what the Commission would
3 feel. I personally wouldn't. I think this is a matter
4 that can be regulated. I have no idea the Commission's
5 feelings on this.

6 MRS. BOTHE: It would be a rather difficult
7 provision to write, since appeal to what is the question.

8 THE CHAIRMAN: The next section is headed,
9 Rulemaking Power.

10 We don't have any specific draft of that, and
11 I believe, Larry, these points, 1, 2 and 3, are those
12 which you gleaned from the meeting in Atlantic City, is
13 that correct?

14 MR. RODOWSKY: That is correct.

15 JUDGE BRUNE: May I ask one question about
16 that, Mr. Chairman, Paragraph 2 of the outline, principle.
17 I am not sure what it means.

18 THE CHAIRMAN: I was going to ask Larry myself.

19 JUDGE BRUNE: The power of General Assembly
20 should be concurrent with the rulemaking power concerning
21 practices and procedures, but the latter should be para-

1 mount. What is the latter?

2 MR. RODOWSKY: The court.

3 JUDGE BRUNE: May I also suggest, I know you
4 haven't gone into this very fully, that this is one point
5 which the nature of the constitutional provision leaves
6 me somewhat more puzzled than I am under the present
7 Constitution, and I am badly not puzzled there, as to
8 what are the powers of the chief judge of the State's
9 highest court as the judicial head of the judicial system?

10 MR. ENEY: You understood this is not a draft.
11 This is a mere statement of principles.

12 JUDGE BRUNE: This unfortunately goes back to
13 Rule 7, which we had supposedly passed, but because that
14 phase of the matter seemed to me to be so tightly bound
15 up with the question of rules, I reserved the question
16 to this point, perhaps erroneously.

17 MR. ENEY: I think the statement in 8 grew
18 out of the fact that others have indicated that more
19 elaborate organization is needed. That is what is going
20 to happen under 8. Isn't that about 8, Larry?

21 JUDGE BRUNE: How far can the Chief Judge of

1 the Supreme Court of Appeals go, or the present Court
2 of Appeals for that matter, in undertaking to see to it
3 that the full activity is carried on in the Circuit Court?
4 And what power is there to enforce administrative orders.
5 Those are matters which are fairly obscure to me at the
6 present time. I have in mind a rather unpleasant en-
7 forcement procedure, which was taken in Michigan some
8 years ago, where a circuit judge refused to accept an
9 assignment to another court, and the Supreme Court of
10 the State fined him for contempt.

11 THE CHAIRMAN: I think the matters you are
12 mentioning, Judge Brune, will be covered in a draft when
13 we get to that point.

14 JUDGE BRUNE: I want to be sure that those rather
15 practical points were not overlooked.

16 THE CHAIRMAN: Mr. Invernizzi emphasized the
17 same thing to us in Atlantic City, that the present
18 language leaves a little bit to be desired as to just
19 exactly what the powers are.

20 JUDGE BRUNE: To make it all the worse, the
21 language in this draft is even skimpier, Section 7, than

1 what is in Section 18(a).

2 THE CHAIRMAN: We are aware of that deficiency,
3 and I think we will do something to correct it.

4 JUDGE BRUNE: Thank you.

5 JUDGE CLAPP: It seems to me that the rule-
6 making power as to practice and procedure is essentially
7 a judicial function. I wonder why substantively you would
8 say that the power of the Legislature shall be paramount
9 in that field.

10 MR. MARTINEAU: The other way around.

11 JUDGE CLAPP: I am sorry.

12 MR. MARTINEAU: Larry wrote this in Atlantic
13 City. I think that is the problem.

14 JUDGE CLAPP: Why should the Legislative
15 have any room for action in the realm of practice and
16 procedure? I remember when we were trying to get the
17 authority through the Legislature to adopt the rules back
18 in '39 or '41, '39, I believe it was, and of course,
19 that was because of the feeling again that the Court of
20 Appeals at that time said, that without legislative author-
21 ity, it felt it may not have power, being an appellate

1 court, to adopt these rules and it would not do it, as
2 I recall it, without legislative action. Personally, I
3 have always felt it is a judicial function, and shouldn't
4 be a matter of legislative concern at all.

5 JUDGE PROCTOR: The difficulty is some of
6 these new uniform laws are procedural proceedings. We
7 ran into that in the arbitration.

8 THE CHAIRMAN: That was one reason, and of
9 course, now it can be a ping-pong. The Court of Appeals
10 can pass the rule and the Legislature changes it.

11 JUDGE CLAPP: That should be avoided.

12 THE CHAIRMAN: I don't think there has been
13 any real difficulty with that up until now, as far as I
14 know.

15 JUDGE BRUNE: You are entirely correct, sir.
16 There never has been. I think that is largely because the
17 Rules Committee has consistently taken the position that
18 it wanted to avoid conflict, and the Court of Appeals has
19 gone along with that same view.

20 JUDGE PROCTOR: We also are policing it now.

21 MR. INVERNIZZI: Our disciplinary proceeding

1 rule, as you know, defines Bar Association, and the Legis-
2 lature redefined it.

3 MR. SYKES: There is one good reason for giv-
4 ing the Legislature some say here. That is that many
5 questions of practice and procedure involve policy con-
6 siderations that are better made by the representative
7 assembly, for instance, matters of adoption law or ques-
8 tions involving venue in divorce actions and special
9 provisions where they are really more political than
10 technical even though they involve practices and procedures.
11 The Legislature has deferred in those matters, as the
12 Legislature has deferred in one instance where there
13 was a real battle, and that is where you took an appeal
14 from a Workmen's Compensation decision. They did bounce
15 the ball two or three times. There the Legislature
16 stopped and let the court have the last say.

17 JUDGE PROCTOR: You have to provide for two-
18 tier rules, Court of Appeals rules, and then so far as
19 not inconsistent, for local rules.

20 MR. ENEY: To the extent permitted by the
21 general rules.

1 JUDGE PROCTOR: Yes.

2 THE CHAIRMAN: Gentlemen and ladies, I think
3 we are getting down past the time I said we would adjourn.
4 I wonder if we couldn't skip quickly over the selections
5 because I think you are all generally familiar with the
6 Niles Plan. We again cut down the details of it and
7 simply provided the Nominating Commission, composed of
8 lawyers and lay members.

9 JUDGE PROCTOR: I notice you put back the chief
10 judge where the Legislature took it out.

11 THE CHAIRMAN: That is our present thinking.
12 I think the Members of this Committee at least feel that
13 the chief judge should be on it.

14 JUDGE PROCTOR: I am not quarrelling, but
15 commenting.

16 MR. MARTINEAU: Don't wave a red flag.

17 THE CHAIRMAN: As you all know, we are not
18 the Constitutional Convention. All we can do is make
19 suggestions. It is something that could be easily changed,
20 if it doesn't meet with the approval of the majority of
21 the Convention.

1 We may want to skip over to Page 10. I am
2 doing this only in the interest of time now. Do any of
3 you want to comment on the selection of judges section?

4 JUDGE CARTER: I think the same district philos-
5 ophy prevails there.

6 JUDGE PROCTOR: Why, as a matter of curiosity,
7 on term, why did you shorten the term to one year rather
8 than lengthening it? It doesn't make any difference to
9 me.

10 THE CHAIRMAN: That was a compromise. Some
11 Members of our Committee wanted to reduce it to 8 and 10,
12 I believe, and this was^a/compromise.

13 JUDGE CLARK: Doesn't this make it political?

14 THE CHAIRMAN: I think it is a matter of degree.
15 The length of time a judge would serve initially, I think,
16 is really only one year's difference, because it is
17 required here that he serve two years before he stands for
18 election. Once he is appointed, he serves two years
19 instead of one year after the one year following his ap-
20 pointment, instead of one year. That is, two instead of
21 one, and then serves for 12. That could result in only

1 one year's difference than it is now.

2 MRS. BOTHE: You have to keep in mind that the
3 judge is only running against his record. As far as
4 political aspects go, he doesn't have an opponent.

5 JUDGE NILES: Mr. Chairman, I should like to
6 say what I have said before this Commission before, I think
7 it was a backward step to shorten the term. It down-
8 grades the judges. It does bring political considerations
9 into the matter, and I think it would be far better to
10 lengthen the term, if you have to get it in line with
11 elections. I think also that at the present time, if you
12 say that you add the two years probation, you have to add
13 the one year probation we have now to the 15. The longer
14 the term, the better people you will attract.

15 JUDGE PROCTOR: The difference between 12 and
16 15 means the average judge has to stand election twice
17 rather than once. It could be determinative in his de-
18 cision.

19 MR. ENEY: I would like to hear some comments
20 as to the effect of the shorter term on lawyers who might
21 aspire to the Bench, whether it would encourage or dis-

1 courage them or have no effect at all whether you changed
2 the term from 12 to 16.

3 JUDGE PROCTOR: I think 16 or 15 as now is
4 more encouraging than the 12-year term.

5 JUDGE CLAPP: I agree with Judge Proctor.

6 MR. MARTINEAU: Do you feel that in view of
7 the noncompetitive election?

8 JUDGE CLAPP: Yes.

9 JUDGE CARTER: What is the purpose in shorten-
10 ing?

11 MR. MARTINEAU: I can't help but be surprised
12 by sitting here and listening to all the people who have
13 taken judgeships with the competitive elections. Some-
14 how, they think the judgeship would be less desirable where
15 you reduce it from 15 to 12.

16 JUDGE CLAPP: There is always many a slip, and
17 I think Judge Proctor's thought on the possibility of
18 two elections is a discouraging factor.

19 JUDGE PROCTOR: One can see the future a year
20 or two years, not in 15 or 16.

21 MR. MARTINEAU: That is why we want to have the

1 election more often.

2 JUDGE NILES: For what purpose?

3 MR. MARTINEAU: You can't see into the future.

4 JUDGE CLAPP: Then it should be six years.

5 MRS. BOTHE: Actually, the noncompetitive
6 election makes an assurance of a life term, barring the
7 disability provisions. My own feeling is you either
8 have a life term, and that is the way it should be, but if
9 you have an election it should have some meaning.

10 JUDGE CLAPP: It has to some extent. If we
11 had a present system of impeachment only, it would have,
12 but with your proposal of removal of judges, the danger
13 of not being very foresighted in your election and choice
14 seems to me --

15 MR. MARTINEAU: What you are really proposing
16 is, we do away with elections and have life terms?

17 JUDGE CLAPP: No.

18 JUDGE CARTER: What is wrong with leaving it
19 where it is, one year and 15-year term, not disturbing
20 that status, which is pretty well established, but simply
21 going forward with the idea of having a judge run against

1 his record and leaving the terms where they are. You
2 are not creating any material change here.

3 MR. MARTINEAU: I don't think one year before
4 election is long enough.

5 JUDGE CARTER: Leave it at 15 years and one
6 year. The only thing you are changing --

7 JUDGE CLAPP: There is probation there.

8 MR. MARTINEAU: The Committee doesn't feel
9 that the one year is long enough.

10 JUDGE PROCTOR: Is your main fear that the
11 judge is going to soldier on the job if he has a 16-year
12 term rather than 12?

13 MR. MARTINEAU: I think we have had enough
14 experience in the State that the judge is elected and he
15 says, I am elected for 15 years, and you can't tell me
16 what to do.

17 JUDGE PROCTOR: Won't he do the same thing
18 if elected for 12?

19 MR. MARTINEAU: I am for reducing it even fur-
20 ther.

21 JUDGE BRUNE: May I join those who suggest it

1 be somewhat longer? I think 14 years would closely
2 approximate what we have now, and I do believe that shorten-
3 ing the term would tend to be discouraging people of the
4 type that we would like to see go on the Bench.

5 THE CHAIRMAN: I would like to ask this question
6 of the judges. I am frankly in favor of leaving it at
7 15, and as has been mentioned, this is a compromise. It
8 seems to me by shortening the term, even if only three
9 years, to that extent it would reduce the independence of
10 the judges. Does that make any sense to the judges?

11 JUDGE CARTER: I don't think it is a material
12 alteration, but I think it is a step to sort of make it
13 less attractive than it is.

14 JUDGE RASIN: Let me ask you what you contemplate
15 by district?

16 THE CHAIRMAN: Where is that?

17 JUDGE RASIN: It says each judge of the Circuit
18 Court shall be subject to approval or rejection by the
19 electors of that district in which he was required to
20 reside when appointed. Do you mean county?

21 MR. MARTINEAU: That should be county. That

1 is the wrong word in the wrong place.

2 JUDGE RASIN: If that is the case, personally
3 I am opposed to judges being elected certainly in small
4 counties on a county basis, regardless.

5 MR. MARTINEAU: Opposed?

6 JUDGE RASIN: Elected on a county basis regard-
7 less of how good or bad he may be; even if he is a good
8 judge in a small county if he happens to sit in a con-
9 troversial case, perhaps a murder case that involves
10 some prominent people, that could very well throw the
11 election against him because he had presided in a certain
12 way that resulted, or because somebody was found not
13 guilty, and I prefer coming from a small county to be
14 elected, to have districts comprised of certainly more
15 than one county.

16 MR. ENEY: How big?

17 JUDGE RASIN: I like the present Circuit Court
18 that we have.

19 MR. ENEY: They don't exist under the Constitu-
20 tion.

21 JUDGE RASIN: In small counties, I would want

1 three, four, five counties, I would think, three or four
2 counties certainly, in a district.

3 MR. ENEY: Could you do it by a minimum
4 population standard?

5 JUDGE RASIN: Yes. Perhaps you could on that
6 basis.

7 MR. ENEY: What I was getting at, your objec-
8 tion to it was, instead of working out districts for the
9 State, you could say by county to county, total popula-
10 tion, which was not less than so much so that in a large
11 county, it could be counted as one?

12 JUDGE RASIN: Yes.

13 THE CHAIRMAN: One thing the State Bar was
14 quite unanimous about and that was that there should be
15 at least one resident judge in each county.

16 JUDGE RASIN: I agree.

17 THE CHAIRMAN: Your thought is that that resi-
18 dent judge would be elected not only by his county, by
19 the county residents, county voters, but by a combination
20 of counties?

21 JUDGE RASIN: Yes.

1 MR. ENEY: The only place where you now have
2 circuit election is on the Shore.

3 JUDGE CARTER: Yes. The very considerations
4 Judge Rasin was talking about the legislators told me
5 was the motivating reason why that was put in effect in
6 the First and Second Circuit.

7 MR. MARTINEAU: And why it isn't changed in
8 either circuit, you have a resident judge in each county.

9 JUDGE CARTER: They thought it was on a county
10 basis, 20,000 people, you were bound to have political
11 angles.

12 A VOICE: The people you are judging throughout
13 the circuit, why shouldn't they have a right to vote for
14 or against you?

15 MR. MARTINEAU: You won't have the circuit con-
16 flict under this Constitution.

17 JUDGE CARTER: You will have a district in
18 more than one county in the sparsely populated areas.

19 MR. MARTINEAU: Not for Circuit Court.

20 JUDGE RASIN: You should have. It wouldn't
21 be efficient if you didn't.

1 MR. MARTINEAU: Whatever administrative dis-
2 tricts may be established for the Circuit Court, they
3 will be, or that will be done by rule of the court and
4 will merely be for administrative purposes.

5 MR. INVERNIZZI: There would be a judge in the
6 Circuit Court for the State of Maryland.

7 JUDGE TUCKER: Mr. Chairman, I think the long
8 term is much better for the reasons stated by my other
9 senile colleagues.

10 THE CHAIRMAN: Thank you, Judge.

11 JUDGE TUCKER: Senile, question marks.

12 THE CHAIRMAN: Judge Rasin, we will certainly
13 consider your suggestion. Right at the moment, I can't
14 think of the words that we can use to do it, but we will
15 take that under consideration.

16 JUDGE CLAPP: I hope in connection with that you
17 won't change the system that is in effect all over the
18 Western Shore, and that is election county by county.

19 THE CHAIRMAN: That would probably be the
20 better way to do it.

21 JUDGE CARTER: I might say the judge is in the

1 First Circuit and Judge Duer, Judge Mace and Judge Pretty-
2 man, I have heard them express the same sentiment that
3 has been heard here. Unless they have changed, that is
4 their feeling.

5 JUDGE PROCTOR: I am sure Judge Day would
6 express contrary sentiments.

7 MR. SYKES: Is it possible the word, district,
8 was chosen with deliberation and carrying over from 4(b)
9 and the idea was, if the district has one county, your
10 judges are elected from that county, if more than one, he
11 is to be elected from that district? That is the way I
12 read the meaning.

13 MR. RODOWSKY: That is my understanding of that
14 one point. It should be county.

15 THE CHAIRMAN: Let's go to Section 11, Retire-
16 ment of Judges.

17 This provision allows the chief justice with
18 the approval of the majority of the members of the court
19 to bring back for temporary judicial duty the retired
20 judge or justice of any of the courts.

21 I understand that the State Bar adopted a similar

1 provision, but limited only to appellate judges. Am I
2 right on that?

3 JUDGE CARTER: Appellate judges?

4 MR. SYKES: For appellate service only.

5 THE CHAIRMAN: That is right. Are there any
6 comments on that section the way it is drafted here?

7 MR. SYKES: All I can say as a Member of the
8 Committee of the State Bar, having some exposure to the
9 temper of the Bar, the limited provision with regard to
10 the Court of Appeals, or appellate judges, barely squeaked
11 through by a very narrowly divided vote, and I believe
12 that the sentiment of the Bar is overwhelmingly against
13 any further use of the retired judge.

14 JUDGE PROCTOR: It failed previously.

15 MR. SYKES: I think you might jeopardize the
16 Constitution by sticking on a controversial matter of that
17 kind.

18 JUDGE WARNKEN: Mr. Chairman, it is too late
19 for me to give my views on that. I have very definite
20 views, and I would be able to establish that the report
21 of your Committee, Mr. Sykes, is founded on facts that are

1 not correct, but I won't take the time now to do it. If
2 you want me to, I will be glad to bring you my views about
3 that, and you can do with it whatever you please.

4 THE CHAIRMAN: We would appreciate having them.

5 JUDGE WARNKEN: It is too late now for me to
6 go into that. There shouldn't be any difference between
7 nisi prias and Court of Appeals. If they don't have one,
8 they shouldn't have the other. If they have one, they
9 should have both.

10 MR. MARTINEAU: Your recommendation would be
11 we have both?

12 JUDGE WARNKEN: By all means, as you have it
13 here.

14 THE CHAIRMAN: The next section has to do with
15 the removal of judges. It is very general language, per-
16 mitting the chief justice to either retire or remove a judge
17 for cause. I think there are certain phrases in this
18 section that we will perhaps want to omit or tighten up a
19 little bit, but the general idea is that the removal
20 power will be in the Supreme Court of Appeals.

21 JUDGE PROCTOR: Isn't this the same thing the

1 State Bar approved a couple of year ago, except the court
2 rather than the independent Commission?

3 THE CHAIRMAN: In principle.

4 MR. MARTINEAU: We don't actually set up the
5 Commission here. We put the power of removal in the court,
6 and then let the court adopt it.

7 JUDGE PROCTOR: By rule can adopt the Commis-
8 sion.

9 MR. RODOWSKY: The power was never in the
10 Commission.

11 JUDGE WARNKEN: I wanted to inquire about that.
12 I see you say the Supreme Court of Appeals shall have
13 power to provide by rule for the implementation of this
14 section.

15 Personally I am highly in favor of the court
16 acting in all such matters. I think the idea of the
17 Commission is better. After all the problem is a court
18 problem. They ought to keep their own house in order.
19 I was just wondering whether the Supreme Court would have
20 power to create some kind of a commission and give it
21 power of contempt or contumacy or immunity, et cetera,

1 and power to summon witnesses and documents and papers
2 and the like. I say I wonder whether that would be a
3 rulemaking power that would be exercised.

4 THE CHAIRMAN: I would think that the Supreme
5 Court could not delegate that power, but perhaps could
6 set up a commission to maybe make recommendations.

7 JUDGE WARNKEN: How would the commission get
8 the facts that they wanted to approve? In the first place,
9 the judge complained against would have to have a hear-
10 ing. I think that is pretty deeply rooted now from the
11 Supreme Court decision. He would have to be notified
12 of the things that he is charged with and so on. Now,
13 how would the commission -- would the commission conduct a
14 hearing as sort of a referee? How would it get the facts?
15 How would it summon witnesses who are reluctant to appear
16 and give immunity?

17 JUDGE PROCTOR: The Court of Appeals recently
18 adopted a rule on disbarment which covers all that.

19 JUDGE WARNKEN: On what?

20 JUDGE PROCTOR: Disbarment or disciplinary
21 proceeding rather.

1 JUDGE WARNKEN: I raise the question. I
2 haven't looked into it. I only raise it because I think
3 that is important, and I would like this comment. I
4 would make this comment. I think the effectiveness of
5 this proposed addition to our laws is not in how many
6 cases are tried but to have somebody, some commission or
7 something to which complaints can be made and be able
8 through the commission to contact the judge. In other
9 words, the power to do that is a salutary one, which
10 will get more results than the hearings that will be con-
11 ducted by anybody, even the Court of Appeals or anybody
12 else. That is precisely what happened in California. I
13 am thoroughly familiar with that. I might mention, in-
14 cidentally, that the Federal Government, Senator Tydings'
15 Committee, is going into that very subject with respect
16 to Federal judges, and I have been asked to come over
17 this Thursday and testify about our Maryland Plan which
18 they learned about.

19 I don't want to go into it in any detail. I
20 just throw that out to you. It ought to be set up in such
21 a way that it can have that salutary effect of disciplining

1 the judge without publicity.

2 JUDGE TUCKER: I wonder if this sentence in
3 this proposal would cover what Judge Warnken is saying,
4 the Supreme Court of Appeals shall have power to provide
5 by rules for the implementation of that section.

6 JUDGE WARNKEN: That is just the question I
7 raised.

8 MR. MARTINEAU: The question is whether that
9 goes far enough.

10 JUDGE PRENDERGAST: On the subject of removal
11 I have an embarrassing question. Will adoption of this
12 constitutional amendment remove all existing judges, or
13 will they continue in office until the end of this present
14 term and then their successors be chosen under Section 9?

15 MR. MARTINEAU: We are still debating that.

16 MR. ENEY: This will be covered in the schedule
17 attached to the Constitution.

18 JUDGE PRENDERGAST: This would be in fine print,
19 you mean?

20 MR. ENEY: What is thought of as being included
21 in the schedule are provisions of a temporary nature, so

1 you don't have to reprint them for the next hundred
2 years.

3 I would wonder if the judges would care to
4 comment on one phrase in this section, which is also in
5 the pending constitutional amendment, which gives the
6 right to remove for conduct which shall prejudice the
7 proper administration of justice.

8 JUDGE CARTER: Is it possible that will be
9 spelled out in the rules, or will it be otherwise defined?

10 THE CHAIRMAN: I think that was one of the
11 phrases I had in mind when I said perhaps this needs to
12 be gone over a little bit further. It seems rather a
13 broad statement to make. It could have all sorts of inter-
14 pretation put on it. I think we can improve on that.

15 JUDGE CARTER: Yes. If you leave it in that
16 terminology, it seems to me it certainly is very broad
17 authority.

18 MR. MARTINEAU: Do you feel the word, interfere,
19 would be any better?

20 MR. REDDEN: Where does the phrase come from?

21 MR. MARTINEAU: The phrase is in the present

1 amendment being voted on this fall.

2 MR. REDDEN: This is no better or worse than
3 for cause.

4 JUDGE CARTER: Is that in the amendment?

5 MR. RODOWSKY: Yes.

6 THE CHAIRMAN: The last section has to do with
7 compensation of judges. I don't suppose that interests
8 you at all.

9 JUDGE CARTER: It is very significant, the
10 order in which that topic is listed.

11 JUDGE CLAPP: The last shall be first.

12 THE CHAIRMAN: We certainly want to thank you.

13 JUDGE CARTER: Just one thought, Mr. Chairman.
14 I would like to ask, has any thought been given to includ-
15 ing in this article anything about the appointment of the
16 clerks?

17 MR. RODOWSKY: Yes.

18 THE CHAIRMAN: Yes. We haven't gotten into
19 that. I think our general thinking is that they will be
20 appointed by the judges.

21 JUDGE CARTER: For how long?

1 THE CHAIRMAN: To serve at your pleasure.

2 JUDGE CARTER: Same as the Federal courts?

3 THE CHAIRMAN: Yes.

4 JUDGE CARTER: I think that is a very salutary
5 thing. Something ought to be done.

6 JUDGE JONES: I would like to ask, is there
7 any reason why you gentlemen discriminated against women
8 in the pensions?

9 THE CHAIRMAN: A typographical error.

10 JUDGE RASIN: On this compensation, Mr. Chair-
11 man, I would seriously like to raise a question about
12 constitutional provisions to provide that all judges of
13 the same tier shall receive the same salary, be paid by
14 the State as a constitutional provision. As you well know,
15 every year in the Legislature, there is a constant number
16 of bills to raise judges' salaries statewide, to supple-
17 ment and implement and discriminate and every other sort
18 of thing. Have you considered such a provision and why
19 isn't it in there?

20 THE CHAIRMAN: We have in mind that the sal-
21 aries will be uniform and that they will be paid^{by}/the State

1 and that there will be no supplementation by the counties.

2 JUDGE RASIN: What would prevent the Legis-
3 lature or a county council or county commissioner from
4 voluntarily supplementing the pay or so-called expense
5 accounts which has been done.

6 JUDGE PROCTOR: Didn't you say it was provided
7 it could be done by the local Legislature?

8 JUDGE RASIN: You can't prevent the county
9 council.

10 MR. MARTINEAU: I think you could. I think
11 there will be State officers receiving a State salary. I
12 don't think the county council could donate \$5,000 to the
13 judges any more than they could to a Member of the General
14 Assembly.

15 JUDGE PROCTOR: The authority to supplement
16 today is in the Legislature.

17 MR. ENEY: In the Constitution.

18 THE CHAIRMAN: Your thought is, Judge Rasin, that
19 they should not be allowed to do that, is that right?

20 JUDGE RASIN: Yes.

21 THE CHAIRMAN: That is our thought, too. If it

1 is not covered, we will take another look at it.

2 Are there any other comments on the compensa-
3 tion of judges?

4 JUDGE CLAPP: I raised the question a moment
5 ago on the People's Court, that we are trying to upgrade
6 them and put them in a status creating respect. I heard
7 someone mention different salaries for different tiers.
8 Is it the thought that there will be different salaries
9 in connection with the judges on a statewide basis?

10 MR. ENEY: Just as there is a difference in
11 our Supreme Court, a moderate difference.

12 JUDGE CLAPP: Would there be a difference
13 between the State court and Supreme Court?

14 MR. ENEY: This would be a legislative matter.

15 THE CHAIRMAN: I wouldn't think that would be
16 in the Constitution. You don't believe it should be in
17 the Constitution, do you, Judge?

18 JUDGE CLAPP: No, frankly. I can answer on my
19 own belief.

20 THE CHAIRMAN: Well, we certainly appreciate
21 your coming.

1 JUDGE PROCTOR: Will we continue to get drafts
2 as you grind them out?

3 THE CHAIRMAN: Yes. Obviously, there are a
4 lot of things that you can see that we haven't crystal-
5 lized our thinking on and any time any of you have any
6 thoughts on any matters that pertain to this article, we
7 would appreciate hearing from you concerning it. Any
8 of you who wish to receive drafts of what we are doing,
9 we would be glad to send to you and get your comments on
10 those. That is all I have, except to thank you all.

11 JUDGE WARNKEN: Do you have to ask to be put on
12 the mailing list? The fact that I have received one of
13 these, does that mean I am on the mailing list?

14 MR. BROOKS: That is right, you are on the
15 mailing list if you have received one of these.

16 JUDGE WARNKEN: That answers it.

17 THE CHAIRMAN: If, after you go home to think
18 about this for a while, about this meeting, if you have
19 any second thoughts or any further ideas, please get in
20 touch with us because we do want to hear from people who
21 are experienced in the field, and we think that this

1 meeting tonight has been very helpful to us. We appre-
2 ciate it very much.

3 (Meeting adjourned at 10:45 p.m.)
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1 CONSTITUTIONAL CONVENTION COMMISSION

2 Committee on State Finance and Taxation

3
4 Meeting of the Constitutional Convention
5 Commission, Committee on State Finance and Taxation,
6 held on Monday, July 25, 1966, at 3 o'clock p.m., at
7 1700 One Charles Center, Baltimore, Maryland.
8
9

10 PRESENT:

11 Richard W. Case, Esquire,
12 Chairman of the Committee on
13 State Finance and Taxation
14 Dr. Martin D. Jenkins, Member
15 Mr. L. Mercer Smith, Member
16 Calhoun Bond, Esquire, Member
17 Steven H. Sachs, Esquire, Reporter

18
19
20 ALSO PRESENT:

21 John C. Brooks, Esquire,
 Executive Director

Reported by:
C. J. Hunt

1 THE CHAIRMAN: Gentlemen, the meeting will come
2 to order. Today I have asked Mr. Milson C. Raver,
3 Executive Secretary of the Maryland State Teachers Associa-
4 tion, to appear before the Committee for the purpose of
5 giving his views on the question of changing or not chang-
6 ing, as the case might be, Subsection 11, Section 52,
7 Article 3 of the Constitution.

8 We all know in general what this section pro-
9 vides, but for the sake of the record, let me just say
10 that the particular part that we are now faced with reads
11 as follows, and I quote: The estimate for the Legislative
12 Department certified by the presiding officer of each
13 house of the Judiciary as provided by law, certified by the
14 Comptroller, and for the public schools, as provided by
15 law, has been transmitted to the governor in such form
16 and at such times as he shall direct and shall be included
17 in the budget without revision.

18 At the hearing that the Committee held on
19 June 9, there were a number of witnesses who were heard,
20 and some of those left the Committee with the impression
21 that as a matter of fact, the governor does negotiate with

1 the State Department of Education before the inputs in
2 the school financing formula have been finally determined.
3 This led Dr. Sensenbaugh to admit on the record that as
4 far as the actual practice of making the school budget is
5 concerned, it is a fact that the governor has changed it
6 in the past.

7 I think I should state in all candor that this
8 problem having been put before the Committee in this
9 fashion has led to some thinking along the lines that per-
10 haps in keeping with the strong executive budget, we should
11 certainly remove the restrictions that apply to the governor
12 with respect to the school budget.

13 DR. JENKINS: Dick, would you make it clear
14 that this has not come before the Committee?

15 THE CHAIRMAN: That is right.

16 DR. JENKINS: Therefore, no sentiment has been
17 expressed, and it is probably not unanimous.

18 THE CHAIRMAN: I certainly want to make this
19 clear, this was gained solely from reading the record of
20 the hearing, which we held on June 9, 1966. I do want
21 to say that the Committee has already considered that part

1 of the budget amendment which states in effect that the
2 Legislature may not reduce that portion of the budget
3 which reaches them and deals with school affairs. Is this
4 correct, Mr. Sachs?

5 MR. SACHS: Yes. We considered at the last
6 meeting, as the minutes reflect, the first five subsec-
7 tions of the proposed new draft, which as you have indicated,
8 leaves unchanged that privilege.

9 THE CHAIRMAN: So that we are not here discus-
10 sing the question of the power of the General Assembly
11 to cut the school budget. The Committee believes, at
12 least, that power should be denied. What we are talking
13 about is the way the executive makes up his budget and,
14 as I see it, the issue is in substance whether or not the
15 governor must accept the budget prepared by the State
16 Board of Education, or whether or not there should be some
17 room for the governor to negotiate with the State Board,
18 as to what the budget should be, or indeed have a veto
19 power, consistent with law, over the budget.

20 Now, with that prefatory statement, I would like
21 to ask Mr. Raver if he has any statement he would like to

1 make.

2 MR. SACHS: Off the record for a moment.

3 (Discussion off the record.)

4 MR. RAVER: Mr. Case, I do have a statement, and
5 very frankly, it is a bit longer than it should be. The
6 pertinent part is in the second half, but if you people
7 would bear with me, I will proceed with the entire state-
8 ment, to give some background, which leads to the feelings
9 I have tried to express herein.

10 THE CHAIRMAN: Very well. You may proceed.

11 MR. RAVER: For the rest of it, I will follow
12 closely to the statement which you have there.

13 I wish to express my appreciation to Mr. Richard
14 Case, Chairman, and to the members of the Committee on
15 Finance Provisions for the opportunity to appear here
16 today concerning certain aspects of your work as they
17 might affect public education in Maryland. I am well aware of
18 the fact that all of you are busy people and that you have
19 taken on a major responsibility, in addition, looking
20 forward to a revision of the Constitution of Maryland,
21 subject to the calling of the Constitutional Convention.

1 I appeared, along with other representatives
2 of public education, before the Committee on Miscellaneous
3 Provisions to discuss public education, principally in
4 connection with Article 43 of the Declaration of Rights
5 and Article III of the Constitution. I have now had an
6 opportunity to read the recommendations made by this lat-
7 ter Committee in their Fourth Report.

8 I also attended, on July 19, the Community
9 Seminar, the first of a series of regional conferences
10 being sponsored by the Extension Division of the University
11 of Maryland to promote citizen interest in the Constitu-
12 tional Convention.

13 Very frankly, I am disturbed by a number of
14 the recommendations which have already been made, are
15 under consideration, or have been discussed at the Seminar.
16 In addition, the rumor persists that this Committee plans
17 to remove the guarantee that funds, in accordance with
18 the statutes, will be placed in the budget by the governor,
19 as provided for in Article III, Section 52 (11) from the
20 Constitution. I have discussed this matter with Mr. Case,
21 and he very kindly offered to allow me to present a

1 statement before you today.

2 I wish to begin with a very brief summary of
3 the provisions for public education in Maryland as they
4 currently appear in the Constitution of Maryland:

5 1. The Declaration of Rights -- Article 43 --
6 establishes education as a Human Right.

7 2. The Constitution -- Article VIII -- provides:
8 Section 1. Establishment of the free public
9 schools and provides for their financing and maintenance.

10 Section 2. A grandfather clause for the pre-
11 existing schools.

12 Section 3. That the School Fund of the State
13 shall be kept inviolate.

14 3. Article III. Section 52 provides:

15 (6) That "the General Assembly shall not amend
16 the Budget Bill so as to affect.....the provisions made
17 by the laws of the State for the establishment and main-
18 tenance of a system of public schools...."

19 It is my understanding this will not be changed
20 as far as the Committee's thinking is now concerned.

21 THE CHAIRMAN: That is correct.

1 MR. RAVEN: The last sentence of (11) is quoted
2 herein, which is the point in question:

3 (11) "The estimates for the Legislative Depart-
4 ment, certified by the presiding officer of each House,
5 of the Judiciary, as provided by law, certified by the
6 Comptroller, and for the public schools, as provided by
7 law, shall be transmitted to the governor, in such form
8 and at such times as he shall direct, and shall be included
9 in the Budget without revision."

10 Now, let me review the recommended changes and
11 the rumors of change:

12 1. The Committee on Miscellaneous Provisions
13 has proposed that Article 43 of the Declaration of Rights
14 be eliminated from this part of this basic document. Is
15 education no longer to be considered a Human Right? Those
16 of us working in the field of education believe that it
17 should so remain.

18 2. In lieu of Article 43 of the Declaration of
19 Rights and Article VIII of the Constitution, it is recom-
20 mended that there be an article as follows:

21 Section 1. The General Assembly shall provide

1 for a statewide system of public schools....

2 Please note here the financing is removed to
3 another section.

4 Section 2. The General Assembly shall provide
5 for and maintain a system of higher education....

6 Section 3. The University of Maryland shall
7 be the State university and shall be given autonomy in
8 the control and direction of all expenditures provided for
9 it.

10 Section 4. The State school system shall be
11 supported and maintained without discrimination.

12 In this, of course, the words, race, creed,
13 color, would appear there, I presume.

14 Those of us who appeared before the Committee
15 on Miscellaneous Provisions recommended that the State
16 Board of Education and the State Superintendent of Schools
17 be given constitutional status as is now being done in
18 many other states.

19 I might say parenthetically in line with what
20 the University of Maryland is asking for in way of autonomy.
21 We are not asking for autonomy, but we did ask they be

1 recognized as given some constitutional status.

2 This recommendation was not accepted by the
3 Committee.

4 I also wish to point out that we are advised
5 by legal counsel that Section 3, of Article VIII, as now
6 provided for public education may not be used, once they
7 have been appropriated, for the purposes of private or
8 parochial education in Maryland. On the basis of this ad-
9 vice, we are extremely concerned that the Committee on
10 Miscellaneous Provisions has recommended that this section
11 be dropped, apparently on the basis of the specious argu-
12 ment that there is no longer a State School Fund, per se,
13 in the State of Maryland.

14 At the Seminar, held in Towson last Tuesday,
15 other recommendations and suggestions that have consider-
16 able import for public education in Maryland were also
17 discussed:

18 1. That more power be centralized in the
19 governor of Maryland. I understand that the entire Con-
20 stitutional Convention Commission has unanimously adopted
21 the recommendation that the offices of Attorney-General

1 and Comptroller be filled by appointment of the governor
2 instead of by popular vote.

3 2. Professor Garrett Power also suggested
4 that the Superintendent of Schools should be appointed by
5 the governor, as near as I can quote him, "to carry out
6 his program for education and to serve at his pleasure."

7 3. Professor Power also suggested that three
8 readings of bills under consideration in each House of
9 the General Assembly was an archaic provision. I believe that
10 he was implying that this procedure is a useless waste of
11 time instead of representing the chief protection for the
12 citizens of Maryland against the hurried passage of unwanted
13 legislation.

14 4. It is also rumored that this Committee on
15 Finance is considering the removal of the guarantee of
16 funds for public education from Article III -- Section
17 52 (11).

18 I am deeply concerned -- in fact, I think horri-
19 fied would be a better word for it -- with this apparent
20 trend in thought within the Constitutional Convention
21 Commission and its various committees. Apparently, the

1 entire Commission is about to embrace the current theory
2 in the field of political science of centering more power
3 in the office of the governor -- a theory, in my humble
4 opinion, which is often accepted in the classroom in the
5 absence of very little knowledge of practical politics as
6 evidenced in Annapolis, either in the governor's office
7 or in the halls of the Legislature.

8 If I may digress for a brief moment, one example
9 of my dissent deals with the appointment by the governor
10 of the Comptroller, one of whose principal duties is the
11 collection of State revenue. Blood has been shed since
12 the time of the Romans -- and probably before -- over the
13 collection of taxes. Therefore, I believe that the State
14 official responsible for this task should be kept as close
15 as possible to the people on whom the taxes are levied,
16 namely that he should be elected by popular vote.

17 I am much more concerned with the current think-
18 ing concerning the proposed treatment of public education
19 in the revision of the Maryland Constitution. As I have
20 already stated, we believe:

- 21 1. That a statewide system of public education

1 is a Human Right which should be guaranteed to every
2 citizen of the State. It was so considered in 1867; is it
3 less important today?

4 2. That removal of Section 3 of Article VIII
5 would allow for the diversion of State funds appropriated
6 for public education for the support of private and/or
7 parochial schools.

8 3. That the recognition of higher education,
9 generally, in the State of Maryland in the Constitution
10 is proper. However, I cannot understand the logic in
11 elevating the autonomy of the University of Maryland to
12 constitutional status while at the same time the security
13 for public education in the elementary and secondary fields
14 should be reduced from constitutional to statutory status.

15 Note I say security for public education. I
16 guess I should have said fund, rather than just the security.

17 To speak directly to the point, in Article III,
18 Section 52 (11):

19 This subsection is the primary protection which
20 keeps public schools out of politics. To remove the phrase
21 "public education" from (11) is an excellent way to allow

1 our schools to revert to their pre-1916 status. Then,
2 they were rife with political control and we had, in fact,
3 no statewide, adequate program of public education in
4 Maryland.

5 An act of the General Assembly in 1914, Chapter
6 844, created a Commission to make "a comprehensive study
7 of the public school system of the State of Maryland, of
8 the State-aided elementary and secondary schools, and the
9 higher education institutions of the State of Maryland,
10 with a view to correlating and coordinating the different
11 institutions wholly or partially supported by State
12 appropriations."

13 Prior to the enactment of Chapter 844, the
14 governor of Maryland sat as a member of the State Board
15 of Education. The governor also appointed the State
16 Superintendent of Schools. Members of local boards of
17 education administered the schools on an election-ward
18 basis. Each member approved the appointment of the teacher,
19 bought the coal for the pot-bellied stove, and placed the
20 orders for textbooks and other supplies for the school in
21 his election district on a political patronage basis.

1 Gentlemen, when I first became Secretary of
2 the Maryland State Teachers Association twenty-two years
3 ago this coming February, this was just barely over the
4 hill in Baltimore City, and there was a vestige of it
5 still going on in Cecil County on such things as the orders
6 for textbooks and other supplies in the various schools
7 from which the School Board members came. This is con-
8 firmed by the report of the Commission established in 1914,
9 as reported by Doctors Abraham Flexner and Frank B. Bach-
10 man.

11 May I say this again reports one of the land-
12 marks in educational surveys. It was the first one ever
13 done by a grant of the Legislature and the general Education
14 Board, which was one of the first services in the field of
15 education by the Carnegie Foundation when it was established,
16 slightly ahead of that time.

17 Quoting from the report:

18 "In view of these conditions it is easy enough
19 to understand why a fundamentally correct type of organiza-
20 tion produces unsatisfactory educational results in
21 Maryland. But, as a matter of fact, the State does not

1 even fare as well with its present organization as it
2 might: why not?

3 "A few words suffice to explain. Public educa-
4 tion in Maryland is 'in politics.' Politics are apt to
5 prevent the State Board from acting with vigor; to deter-
6 mine the composition of the county boards; to affect the
7 choice of the county superintendents; even to enter into
8 the selection of the one-room rural schoolteacher. Of
9 course, there are exceptions. Some of the county boards
10 are excellent; some schools are entirely free from political
11 taint. But, in general, political and personal consider-
12 ations impair the vigor, independence, thoroughness, and
13 efficiency of the school system. The public does not
14 begin to realize the seriousness of the political infec-
15 tion or the damage it does."

16 Some of you will remember the late Marie Bauern-
17 schmidt who led the fight to free the schools of Baltimore
18 City from political control. This was such a difficult task
19 and so long delayed that Mrs. Bauernschmidt became an erst-
20 while political leader in her own right.

21 In discussing with Mr. Case the guarantee of

1 appropriations, as provided by statute, for public educa-
2 tion, he has indicated that a problem arises concerning
3 the estimates required by statute in the determination of
4 the agency's budget, as submitted to the governor. I was
5 informed of testimony before this Committee that the past
6 and present practice, despite the constitutional guarantee
7 in (11), has involved a negotiation between the governor's
8 office, or the office of the Budget Director, and the
9 State Department of Education. I have carefully checked
10 this matter with the Finance Division of the State Depart-
11 ment of Education and the Deputy Superintendent of Schools,
12 Dr. David W. Zimmerman, and find that there has never been
13 any "negotiations" over the budget as submitted by the
14 State Board of Education. There have been "conversations"
15 over:

16 1. The proper assessable bases in the deter-
17 mination of the local share of the costs of the State
18 minimum program;

19 2. The numbers of pupils to be enrolled;

20 3. The numbers and certification status of
21 teachers to be employed.

1 The first item is no longer a problem; the for-
2 mula for the appropriation of funds is now based on the
3 assessable bases for the year preceding the fiscal year.
4 Therefore, it is already known and no longer an estimate.
5 Furthermore, since net taxable income now figures in the
6 determination of the local share of the costs, the figures
7 for the second year preceding the fiscal year are used and,
8 hence, are already determined. Therefore, no estimates
9 are any longer involved.

10 The second item depends upon the number of
11 children already born --

12 THE CHAIRMAN: Let me interrupt you there. My
13 understanding is that net taxable income does not figure
14 in the determination of the local share of the cost.

15 MR. RAVER: Yes, remember the old 87 cents that
16 was to determine the local share? The local money put up
17 for equalization, so-called equalization money was 87
18 cents on the taxable base, and you see, the reason the
19 taxable base was so important, it was rising.

20 THE CHAIRMAN: I understand that, but the school
21 people last year tried to get a net taxable income into

1 the formula, and the Legislature wouldn't go for it. It
2 was still just a reasonable basis.

3 MR. RAVER: No, it was in the Hughes Program
4 in '64.

5 THE CHAIRMAN: That is what both Sensenbaugh
6 and the budget analysts said. I have got their book. It
7 doesn't say anything about net taxable income.

8 MR. RAVER: I am sorry, it is in there. If
9 you look in your School Law, it is in there now. Instead
10 of the 87 cents, there is a factor of 1.228. It is a
11 factor now. It isn't any longer --

12 THE CHAIRMAN: What does that have to do with
13 net taxable income?

14 MR. RAVER: Because the local effort is measured
15 by a product of the net taxable income per family, and the
16 total assessable base of the county.

17 THE CHAIRMAN: I was under that impression, too.
18 I asked that question to Dr. Sensenbaugh or somebody at
19 the meeting, and they said very definitely that it wasn't
20 part of it.

21 MR. RAVER: That is definitely part of it.

1 This was put in in -- when did the Hughes Bill pass, '64,
2 wasn't it; yes, 1964, the so-called Hughes Bill was put
3 in.

4 THE CHAIRMAN: Go ahead.

5 MR. RAVER: -- six years in advance of the
6 fiscal year. Recently, State Department of Education
7 statistics, determined in cooperation with the State Health
8 Department, have been accurate within one-half of one per
9 cent. Obviously, there is little or no room for negotia-
10 tion here.

11 The third item, dealing with the numbers of
12 teachers, has, in the past, been pre-audited at the request
13 of the Budget Director but has never been changed -- let
14 alone negotiated!

15 I understand this has happened twice, accord-
16 ing to Dr. Zimmerman, that two times the question arose
17 and the State Department invited them to send in an auditor
18 for a pre-audit of their estimates. They did, and in
19 neither year was there any change made. As a matter of
20 fact, they didn't even complete the audit the second year.

21 Nevertheless, as long as a single estimate is

1 involved, I would agree that some refinement of subsection
2 (11) might be made. Perhaps the last sentence of (11)
3 might be amended as follows:

4 I simply asked our legal counsel to prepare this
5 because I am no lawyer, but the key to this very obviously
6 is in the last sentence in subparagraph (11) beginning
7 with "The estimates of the Legislative Department", et
8 cetera. You see it before you here: A Proposed Change
9 and Addition to Article III, Section 52, Subsection (11)
10 of the Constitution of Maryland. The last sentence of
11 Subsection (11) is amended to read as follows:

12 "The estimates for the Legislative Department
13 certified by the presiding officer of each House, of the
14 Judiciary, as provided by law, certified by the Comptroller,
15 and for the public schools, as provided by law, shall be
16 transmitted to the governor, in such form and at such
17 times as he shall direct, and shall be included in the
18 Budget without revision; provided, however, that said
19 estimates may be examined and evaluated by the governor, or
20 his duly authorized representative, so as to determine
21 the accuracy of the data upon which said estimates are

1 based. Upon correction of the data, if necessary, in order
2 to conform with the findings of the governor, or his duly
3 authorized representative, as aforesaid, the said department
4 or board involved shall thereafter have the right to re-
5 determine said estimate and shall submit a final estimate
6 and transmit the same to the governor as hereinbefore
7 provided."

8 I don't know if this is of any help or not. I
9 did not draw it. I simply had it drawn by our attorney,
10 on the basis of the suggestions of our conversation the
11 other day with Mr. Sachs.

12 THE CHAIRMAN: Who is that person? Would you
13 identify him for the record, please?

14 MR. RAVER: J. Cookman Boyd, our attorney's
15 firm of -- I beg your pardon. He didn't do this,
16 though I think he probably saw the form before it left the
17 office. I talked with Mr. Boyd today about another matter.
18 This was Mr. Harry Silverwood of Sauerwein, Boyd and Decker.

19 THE CHAIRMAN: Very well.

20 MR. RAVER: To proceed from that, as a sugges-
21 tion only to this Committee, while some further check on

1 the estimates may be considered necessary, or even ad-
2 vantageous, we cannot agree that the final decision for
3 the appropriation of funds should be placed in the hands
4 of the governor.

5 Let me remind you that the present condition
6 of public education in Baltimore City, in which an impar-
7 tial investigation of the schools has been arranged, has
8 come about, in large measure, because of the reductions of
9 the budget of the Board of School Commissioners which have
10 been made by the Mayor and the City Council over the past
11 ten years. One of the principal factors has been the
12 right of the City Council to reduce the numbers of teachers
13 to be employed -- with the effect that the City now has
14 many of the largest classes in the State.

15 Allow the governor to make an arbitrary, similar
16 cut of staffing positions, with the resulting lack of
17 available funds for this purpose to each subdivision, and
18 educational chaos will result in five years, and we will
19 be returned to the pre-1916 status of public education in
20 Maryland.

21 Finally, let me urge you, the members of the

1 Committee on Finance Provisions, not to remove the guaran-
2 tee of funds for public education from Section 52. In my
3 opinion, such a recommendation along with those already
4 rumored, discussed in public meetings, recommended by the
5 Subcommittee on Miscellaneous Provisions, or adopted by
6 the entire Commission, could easily frighten all local
7 boards of education, all school administrators, teacher
8 organizations throughout the State, parent-teacher associa-
9 tions, and other civic groups interested in education into
10 a negative attitude toward the revision of the Constitution
11 which could defeat the referendum on September 13 on the
12 call of a Constitutional Convention thereafter.

13 I might simply add, first of all, my thanks for
14 being invited to come before you. If there is any discus-
15 sion that I can add to, I would be happy to stay for that,
16 but finally, just to say here in connection with my final
17 paragraph, that I have been named a member of the Citizens
18 Committee to Promote the Constitutional Convention on
19 Referendum. I do have a concern that this go ahead, but
20 I tried to indicate here that I am rather worried about
21 some of the preliminary recommendations or proposals.

1 Thank you very much.

2 THE CHAIRMAN: Just to clear up one point in
3 the record, so that it doesn't appear that I am completely
4 cuckoo, Mr. Raver, I call your attention to Pages 199 and
5 200 of the record in the hearing before the Committee on
6 June 9, at which time Dr. Sensenbaugh, Mr. Perkins, the
7 budget analyst, and I were engaging in a three-way conver-
8 sation, and the record reads as follows:

9 The Chairman: In other words, your minimum
10 program is figured at \$340 times the number of students
11 in the County? Dr. Sensenbaugh: Right. If you don't
12 make that 1.228, the State pays the difference. In other
13 words, suppose 1.228 brings Frederick County to \$150. Then
14 what is left over, the State will pay. The Chairman:
15 Don't you take into account not only the assessable basis
16 but also income? Mr. Perkins: Income, yes. The Chair-
17 man: How does that work into it? Dr. Sensenbaugh: We
18 are just using a seasonable basis now. That is what Cooper-
19 Hughes -- Mr. Perkins: That was proposed in Cooper-Hughes,
20 yes. It is not income. The Chairman: It is essentially
21 the old equalization program. Dr. Sensenbaugh: Substan-

1 tially except with the number of pupils in each.

2 So that it was perfectly clear that what Dr.
3 Sensenbaugh and Mr. Perkins told me was that income was
4 not in the formula. Now, you are saying it is. I don't
5 know which one of you to believe.

6 MR. RAVER: Mr. Chairman, this must have been
7 a lack of communication. Each side must have misunder-
8 stood the other, because if you have your book here, Article
9 77, I can find for you in^a very few minutes the changes
10 made in 1964, which puts in the net taxable income as a
11 product with assessable bases and then this factor of
12 1.228 is applied to that. You see, it is no longer a tax
13 rate. It is a kind of a percentage of this product, so
14 obviously that is not \$1.228 cents, you see, so that they
15 have the factor correct, but the answers are not coming
16 across correctly. The net taxable income per school system
17 is the part of the calculation of the local effort. This
18 product is achieved by multiplying the net taxable income
19 times the assessable base and then applying this 1.228.

20 THE CHAIRMAN: Where do they get the net tax-
21 able income from?

1 MR. RAVER: From the Comptroller's office.
2 They use it two years preceding the fiscal year. It is
3 already established by that time. That is why I was
4 saying what I was saying about the two years.

5 THE CHAIRMAN: I am not disagreeing with you.
6 Very honestly, I thought that is what the situation was.
7 That is what I asked Mr. Perkins and Dr. Sensenbaugh, but
8 I got this answer, which made me believe that income
9 didn't play a part in it.

10 MR. RAVER: No. This was enacted by the Legis-
11 lature in 1964.

12 THE CHAIRMAN: All right.

13 DR. JENKINS: I have two questions.

14 THE CHAIRMAN: Let's go ahead with the question-
15 ing then, Dr. Jenkins.

16 DR. JENKINS: The present Constitution refers
17 to the Public School Fund. It is my understanding there
18 is no longer a Public School Fund, and yet I gather you are
19 in favor of leaving that statement in. Would you clarify
20 this?

21 MR. RAVER: Dr. Jenkins, there is --

1 DR. JENKINS: Is it true there is no Public
2 School Fund?

3 MR. RAVER: Per se, that is correct. There is
4 no fund set aside in any bank or series of banks as there
5 used to be.

6 DR. JENKINS: Yes.

7 MR. RAVER: That is years ago. Apparently, I
8 don't know when that was lost to the school financing,
9 but apparently it happened gradually over the years. For
10 instance, there used to be a statewide school tax. That
11 disappeared. There used to be certain odd lot monies put
12 into this fund for paying to the institutions of higher
13 education, as well as the elementary and secondary schools.
14 Now, gradually these disappeared, and so eventually, prob-
15 ably in the reenactment of the law in 1922, though I am only
16 guessing at that, the School Fund per se disappeared.

17 DR. JENKINS: We are in agreement on that.

18 MR. RAVER: But the appropriations made annually
19 by Budget, in effect represent, we believe, a school fund,
20 and as long as that provision stays in the Constitution,
21 we have been advised --

1 DR. JENKINS: Wait, I want Dick to hear this.

2 THE CHAIRMAN: I am listening to him.

3 DR. JENKINS: This confuses me, and he has a
4 legal background.

5 THE CHAIRMAN: Go ahead, Milson.

6 MR. RAVER: We have been advised that as long as
7 that provision stays in the Constitution, it would not be
8 possible for some board, maybe even the State Board of
9 Education, I don't know, to have a great deal of pressure
10 brought on it to have some of these funds transferred to
11 private or parochial schools. This is what happened in the
12 previous days, of the old academies. The State funds were
13 political pressure people.

14 DR. JENKINS: I am referring to the term, the
15 Public School Fund, which to my lay mind, if there is not
16 such a fund, it is an archaic provision.

17 MR. RAVER: The terminology is.

18 DR. JENKINS: Would you recommend some other
19 wording?

20 MR. RAVER: I think it would be a lot clearer
21 if you were to say the funds appropriated for education

1 annually, or some such statement as that should remain
2 inviolate. That would be a lot more pertinent and more
3 up to date, yes. This now reads, Section III, the School
4 Fund of the State shall be kept inviolate and appropriated
5 only to the purposes of education.

6 It is a perfectly innocent statement on the
7 face of it, and frankly, I just ran into this statement
8 in talking with attorneys following my discussion of this
9 with Mr. Case the other day. I didn't raise any question
10 about that when I was here. Now, if in lieu of the School
11 Fund to the State, some such wording as, the annual
12 appropriations as set forth by the governor and enacted
13 by the Legislature -- I don't know whether you need that
14 or not -- shall be kept inviolate and appropriated only to
15 purposes of public education, some such thing.

16 DR. JENKINS: Aren't they inviolate after the
17 appropriation is made?

18 MR. RAVER: According to the advice you have
19 had, they might not be, if you remove this statement.

20 DR. JENKINS: After the appropriation is made,
21 somebody could reduce the fund or channel these into other

1 efforts.

2 MR. RAVER: Or channel into private or parochial
3 education.

4 MR. BROOKS: Mr. Perkins, I believe, indicated
5 that this Section F, Article VIII, at the present time
6 wouldn't have any effect one way or another on that kind of
7 situation, whether it was in the Constitution or not.

8 THE CHAIRMAN: Dr. Sensenbaugh seemed to say
9 that.

10 MR. BROOKS: Completely unrecommended.

11 THE CHAIRMAN: Yes.

12 DR. JENKINS: What do you have to say about
13 that, Dick?

14 THE CHAIRMAN: I must say I don't follow the
15 argument that Mr. Raver is making with respect to the
16 School Fund. I think that is about as archaic as anything
17 we have in the Constitution and how, after an appropriation
18 has been made by the General Assembly to the public school
19 system, the money could be diverted to parochial schools
20 escapes me. I don't see how it could possibly happen. I
21 am certainly willing to learn, and if you have got a

1 written opinion on that, Mr. Raver or anything that would
2 indicate that this is a possibility, certainly I would
3 like to see it, because I don't think anybody on the Com-
4 mission who voted for this thought that removing this
5 provision would give anybody the right to channel funds
6 out of the public school system and into, let's say, the
7 parochial system.

8 DR. JENKINS: I didn't certainly think so.

9 THE CHAIRMAN: I didn't think so. If this the
10 case, I have an open mind on it. I voted in favor of
11 the Miscellaneous Provisions.

12 DR. JENKINS: It was unanimous.

13 THE CHAIRMAN: I think any of us could be in
14 position to ask for a motion for reconsideration. I would
15 certainly do it, but up to now, I just don't see how it could
16 happen, Mr. Raver, based on my experience with State
17 finances. It would be impossible as far as I am concerned.

18 MR. RAVEN: Mr. Case, you know I didn't even raise
19 this point when I talked with you the other day, and it
20 was in getting ready to discuss this other matter in
21 Section 52 that this came about. I don't have an opinion,

1 but let me go back and talk to the attorneys; and if they
2 have something by way of strong argument, far be it from
3 me to argue with this group. I am not an attorney. I
4 would be glad to mail it, bring it in, leave it with you
5 or something of that sort.

6 THE CHAIRMAN: I would certainly say it ought
7 to be sent to Mr. Brooks, who would transmit it to the
8 appropriate committees.

9 MR. RAVEN: I will be glad to do so.

10 THE CHAIRMAN: Do you have any other questions?

11 DR. JENKINS: Yes. My second question is on
12 your proposed change and addition to Article III. It is
13 no secret that you have my vote for retaining this prin-
14 ciple in the Constitution.

15 MR. RAVEN: Thank you.

16 DR. JENKINS: It seems to me it has worked very
17 well, as far as I know it has worked very well with the
18 President's statement, shall be included in the statement
19 without revision, and that even if the Budget Bureau calls
20 the State Superintendent of Education in and says, Here,
21 I question your figures, the testimony shows that the

1 Budget Bureau may not make a change without the agreement
2 of the State Superintendent.

3 MR. RAVER: That is right.

4 DR. JENKINS: My question, then, do you feel
5 that all of this proposal, which is really statutory
6 language rather than constitutional language, after
7 revision, is absolutely necessary?

8 MR. RAVER: No, sir. Dr. Jenkins, I agree with
9 you entirely, that there is no need for it, and not
10 being a lawyer, I certainly am treading in dangerous
11 ground and on thin ice, but it seems to me that what I
12 have suggested or our attorneys have prepared here is
13 statutory language. I quite agree with you.

14 DR. JENKINS: I would like to stop it just,
15 without revision.

16 MR. RAVER: You mean keep it as it is now in
17 effect in the law?

18 DR. JENKINS: I am asking you.

19 MR. RAVER: Yes, sir. That would be our first
20 choice.

21 DR. JENKINS: I think it words very well.

1 MR.RAVER: Why did I bring this in, because
2 again, Mr. Case and I were talking, Mr. Sachs was there,
3 there was no record kept, we were kind of talking off the
4 record, and then I was invited to come here, but as I in-
5 dicated in my statement, Mr. Case felt there was a problem
6 of negotiations. My statement to him was that as long
7 as an estimate is involved in statutory requirements, and
8 there will always be -- you always have to estimate the
9 number of pupils, teachers or something -- as long as an
10 estimate is involved, I must, number one, agree that it is
11 subjective, and therefore it is subject to something,
12 agreement, conversation. I could not, as I got back and
13 thought it over, Dick, agree that negotiations was the
14 word, because negotiation implies you might reach an impasse
15 and then somebody decides, and if you get to that state,
16 you destroy the first statement in the first place, so
17 obviously that word, negotiations, will not go with the
18 provisions that the governor must put up the funds, so
19 this was the nearest thing. Then I learned, too, talking
20 with Dr. Zimmerman, that on at least two occasions, when
21 there was some question arose between either the governor's

1 office or the Director of the Budget, the Director of
2 the Budget, I believe asked for an audit of their calcula-
3 tions. This was readily granted. The first year they went
4 through, found no change and could make none, the second
5 year they gave it up halfway through, so that I think this
6 is perfectly proper. To summarize, then, I would, number
7 one, agree with you that I would hope the Commission, this
8 Committee, would leave this section of the Constitution
9 exactly as is. If the Committee feels, as I gather at
10 least Mr. Case felt so the other day, there is some need
11 for review, then we would suggest it be of this order, and
12 I think this should clear up any problems.

13 DR. JENKINS: You see the great protection here
14 with the President as I understand it, is that although
15 the governor and the Budget Bureau raise a question about
16 the figures, unless the State Department of Education
17 agrees, he may not change these figures. He might bring pres-
18 sure otherwise, but that is up to the intestinal fortitude
19 of the Superintendent. He still has the constitutional
20 protection.

21 The third question I want to ask is really not

1 related to this Commission, or this Committee.

2 You quote a Professor Powers as recommending
3 that the State Superintendent be appointed by the governor.
4 Is there anything in the recommendations of the Commission
5 which support this?

6 MR. RAVER: I do not think so. This was dis-
7 cussed at the Seminar.

8 MR. BROOKS: Do you want this circulated to
9 the rest of the Commission, if you think what you drew in,
10 totally unrelated to the Commission, is pertinent to the
11 rest of your discussion? You might want to take that
12 back out of your discussion. There is no relation
13 between that Tuesday program and the work of the Commis-
14 sion.

15 DR. JENKINS: I hadn't heard of any such pro-
16 posals.

17 MR. RAVER: This is beyond my comprehension,
18 Mr. Brooks. I don't know how the extension service of the
19 University of Maryland got into these. You were there,
20 Judge Gray was there, Mr. Eney was there, and made a pre-
21 sentation. It looked terribly official to me.

1 MR. BROOKS: Judge Gray made it clear from the
2 outset that this was being sponsored as an educational
3 program by the University of Maryland, with the coopera-
4 tion of the Citizens Committee, and the Commission, but,
5 that none of the views stated at any time during the day
6 reflected at all the thinking of the Commission nor any
7 proposals made, and I thought he made it clear that nothing
8 during that day's activities was to be confused with the
9 work of the Commission. That is why I wondered if it is
10 not extraneous in your discussion here.

11 MR. RAVEN: Frankly, you can see the impression
12 I got. Maybe I went with a little suspicion, I don't
13 know, but frankly, that meeting upset me terribly, and I
14 didn't see any point in getting up and discussing it with
15 people who were there. They are not building, I am afraid,
16 support for a successful referendum, saying things such as
17 were said there, and these gentlemen, are they in any
18 way advisory to the Commission?

19 MR. BROOKS: Some are; some are not. Most of
20 the people on these programs have nothing to do with the
21 Commission whatsoever.

1 MR. RAVER: Then I would suggest you had better
2 get them off the program instead of stopping me from say-
3 ing what the program said.

4 MR. BROOKS: The point is, the program is not
5 to represent the work of the Commission in any way.

6 MR. RAVER: If they are all there --

7 MR. BROOKS: They are not all there. The Citi-
8 zens Committee, for instance, is not to transmit the work
9 product of the Commission to the people of Maryland.

10 DR. JENKINS: This does show a problem of com-
11 munication.

12 MR. BROOKS: We really haven't had much of
13 this problem.

14 DR. JENKINS: It is something to think about.

15 MR. BROOKS: We stay away from this problem.

16 THE CHAIRMAN: I might say I think the statement
17 is now in the public domain, because it has been given to
18 the Committee, and I think that Mr. Raver is voicing a
19 genuine concern here on his part with respect to the pos-
20 sible future of the referendum on the Constitution, calling
21 of a Constitutional Convention itself. Now, Mr. Raver

1 speaks for how many public school teachers?

2 MR. RAVEN: We have 28,000 members.

3 THE CHAIRMAN: 28,000 people, and when he, and
4 I have known him for a long time, and I know that he
5 doesn't say things lightly, and when he makes a statement
6 of this kind, it seems to me that he means what he says,
7 and what this statement in effect says -- the statement
8 is made by Professor Power, and other things that he has
9 heard the Commission are doing will not be looked upon too
10 favorably by at least some part of the electorate in the
11 election in September. This is what really gives me a lot
12 of concern.

13 MR. RAVEN: I truthfully am concerned. I would
14 do one of two things. If I were against the Constitutional
15 Convention, I would have never accepted, and I realize this
16 is somewhat in name, a front committee, I would not have
17 accepted the governor's appointment to the Citizens Com-
18 mittee. I intend to do what I can by way of promoting it,
19 but I cannot forget my relationship with public education.
20 If there should come a point as far as recommendations to
21 the Commission, I might resign from the Commission, but I

1 am not talking about that here. That is why I put this
2 extraneous material in it. It certainly is extraneous
3 with reference to Section 52 of Article III. I put it in
4 here to try to give you people the impressions that have
5 come to me, and what I think is happening to public school
6 people and some of the PTA people. The PTA of the Mary-
7 land Congress of Parents and Teachers was there, Mr.
8 Schoenwalter. That is why it is in here, simply as a
9 report.

10 THE CHAIRMAN: Mr. Sachs, do you have a ques-
11 tion?

12 MR. SACHS: I would if I may, like Mr. Raver to
13 come back to what I think we all agree is the real reason
14 for your appearance here today, namely to direct our
15 attention to some of your views concerning Article III,
16 Section 52, particularly the point that presently appears
17 in Subsection (11), concerning the protections or so-called
18 protections to the school budget.

19 What evidence do you have, Mr. Raver, that the
20 existence of that provision requiring the governor to
21 submit the educational budget as presented has, in fact,
in Maryland prevented some of the evils you feel would

1 flow from its abolition, namely, the school system in
2 politics? Do you have any evidence to support that state-
3 ment?

4 MR. RAVER: Yes. I thought I quoted liberally
5 from the Report of the Commission which shows how bad
6 things were prior to 1916, and let me say that the laws --
7 and I didn't put this in here, but Mr. Sachs, the pro-
8 vision in Section 52, Subsection (11), was written in in
9 1916. It was an amendment to the Constitution at that
10 time.

11 MR. SACHS: I understand that all right.

12 MR. RAVER: It must have been thought to be
13 important. Since then, I know, and remember that I work
14 with all 50 school systems through my fellow secretaries,
15 I know of no school system in the country, the entire
16 country, that is as free of political interference as is
17 the school system of Maryland, and this came about since
18 1916, so don't you think it is perfectly logical to con-
19 clude that this and other changes as well were responsible
20 for this sudden change, the sudden freedom from political
21 domination and control? Let me give you one other line of

1 evidence. When I talk with my fellow secretaries, through
2 the year, about what are you doing legislativewise, what
3 advancements are you making, this, that, and the other,
4 too many of them for good comfort say, Well, we fought
5 for and won the battle to sustain our appropriations. I
6 hope we don't get to this point in Maryland. We have
7 never had to fight that battle here in my twenty-two years.
8 I think it is because of this provision. There are
9 probably certain people who would like, the teachers'
10 groups and the rest to be put in the motion to have to
11 fight to sustain their appropriations. I am not making
12 any kind of veiled implications to the Committee here,
13 but there are people I would think would like to see our
14 energies absorbed in that connection. I would rather
15 advance the school system, not fight for the status quo.

16 MR. SACHS: I don't disagree with that general
17 proposition. It seems to me much of what you have said,
18 the quotes from Dr. Flexner and Bachman, et cetera, go to
19 the question of the legislative body, General Council and
20 City Council, being able to cut the City budget, and as
21 we agreed at the outset, the disposition of this Committee,

1 it has indeed voted on that preliminarily, and the disposi-
2 tion is not to tamper with that at all, so what I am really
3 trying to focus on is the evidence you have if any, and I
4 don't think with all due respect, this statement or the
5 additional remarks you just made really do add any evidence

6 What evidence of political damage to the school
7 system do you have to point to, to show the governor can
8 treat the school system just as he does every other
9 department of State, that would result in political in-
10 fluence? Do you have any evidence?

11 MR. RAVER: Mr. Sachs, the evidence^{is}/of the
12 negative type. It is absolutely free of that because we
13 haven't had it. I don't think you will find this is
14 true in the other services in this State. They have been
15 cut. Let me give you one example. They are cutting
16 regularly in the area of higher education, and in, for
17 instance, per diem allowance for food at the colleges.
18 Now, I pose to you the question, who is better able to
19 determine how much they ought to spend for food, the Board
20 of Trustees of the colleges as now constituted or the
21 Budget Director? I say that the Board of Trustees of the

1 colleges have a better idea of what they ought to be
2 spending. It has been done right along. It is done cur-
3 rently in the budget for the State Department of Education.
4 The State Department of Education has had a problem for
5 years in hiring people to come into the State Department
6 from the State of Maryland for the simple reason that
7 they are controlled in salaries in the State Department
8 of Education, not by the State Board as they used to be,
9 Mr. Case, when you were a member, but by the Personnel
10 Director in the State of Maryland. He sets the salaries
11 for the professional employees.

12 Now, there is evidence of this kind.

13 MR. BOND: Is this bad?

14 MR. RAVEN: Yes, sir, I think it is. I think
15 when you have to go out of State or you have to, so to
16 speak, take second best for appointments, it is not par-
17 ticularly good, sir.

18 MR. SACHS: Would you recommend an analogous
19 provision to the one you are urging be retained here, namely,
20 let's call it immunity for the school budget; would you
21 urge such provision for the budget to the Department of

1 Forests and Parks, Mental Hygiene, State Roads Commission?

2 MR. BOND: Welfare?

3 MR. RAVER: As we said the other day, Mr. Sachs
4 my life has been devoted to the field of education. To
5 me, there is only one answer, number one, I think education
6 is more important to the people of Maryland than highways,
7 parks, roads and some of the other aspects. Not all
8 people agree with me, but I would back this up with the
9 fact that the framers of the Constitution of 1777 thought
10 education was a Human Right and put it into the Declaration
11 of Rights, and they also put the provisions in Article VIII
12 of the Constitution. Let me ask you what has changed.
13 What evidence do you have that it ought to be removed at
14 this point?

15 MR. SACHS: There is the notion. My purpose
16 is really, we are anxious to have your views which are far
17 more relevant to this Committee's views than mine are.
18 There is a notion, of course, that the proper function of
19 the Executive, who is after all the elected official in
20 the State closest to the people, is to be able to determine
21 in the public interest the general allocation of State

1 funds, and there is the notion that to single out one
2 aspect of the State's administration of the State, namely,
3 education, as important as everyone agrees that education
4 is, first opens the door to the same claim on the part of
5 other very sincere and significant segments of the popu-
6 lation affected by other State services for the same
7 consideration, and restricts the governor from being able
8 to give full voice to the policies on which he might
9 have been elected.

10 I think that is a powerful argument, without
11 suggesting it is one that I, for what my opinion is worth,
12 would buy wholesale. The charge has been made, of course,
13 that education, that the gist of your remarks and others
14 similar to them, has been to make education, either some
15 people say a sacred cow; others suggest it is an attempt
16 to make education a fourth branch of government. The only
17 other budgets that are accorded the same favorable con-
18 sideration are that of the Legislative and Judicial Depart-
19 ments, so I think there is a legitimate question as to
20 what justification is there, as the Board and everyone
21 agrees education is, what justification is there for tying

1 the governor's hands in this case, and this case only,
2 as opposed to other State services.

3 MR. RAVER: The justification, number one, as
4 I tried to say in here, is without these protections and
5 these provisions, of which, remember, Subsection (11),
6 the additions of public education, Subsection (11) was
7 accomplished in 1916, without these protections, education
8 was in a very bad state in Maryland.

9 Now, these changes were made. Provision for
10 public education was put into Subsection (11) and almost
11 overnight, the schools began to improve in this State,
12 to a point where we have risen to where we have one of the
13 best school systems in the country by way of organization
14 and freedom from political control. The evidence must be
15 on your side to show why it should be removed, not mine.

16 MR. SACHS: You are not saying before that,
17 but after that. I don't know that that is always a true
18 axiom. It is equally possible that after the public commit-
19 ment of that today that the attitude toward education and
20 toward political relationship to education in the State has
21 changed considerably. I don't know the answer. That is

1 entirely possible.

2 MR. RAVER: Don't ignore the evidence I gave
3 some time ago that in many States one of their biggest
4 problems is to maintain the budget.

5 MR. SACHS: Is it your opinion you have given
6 us evidence to justify the retention of this very narrow
7 point? I am not talking about other protections education
8 has, the restrictions as to any legislative tampering
9 with the education budget, only this narrow point, that
10 the governor may not revise the budget as submitted to
11 him. Is it your testimony, then, that that provision alone
12 has been responsible, if not, to what extent has that pro-
13 vision been responsible for the very favorable climate
14 toward education and political education in this State?

15 MR. RAVER: I would say it is the most impor-
16 tant change that was made in 1960, and it is now the most
17 important protection of public education in the State of
18 Maryland.

19 MR. SACHS: As to my other question, I take it,
20 then, your answer is you simply consider from your point
21 of view, of course, that education is simply more important

1 than Welfare or health or roads or forests and parks, con-
2 servation, all the other State services that exist, is
3 that right?

4 MR. RAVER: I would think it would be clear that
5 I am not in position to answer; if this were a case where,
6 for instance, a judge removes himself from the Bench, if
7 he is close to the situation, I am not in position to
8 decide whether these other services ought to be given some
9 kind of protection. Maybe they ought. I don't know.

10 MR. SACHS: That is the problem this Commission
11 has. They do have to make that judgment.

12 DR. JENKINS: Not to put words in Mr. Raver's
13 mouth at all, because he is competent to put his own words
14 there, but this is precisely the issue, whether education
15 is something special, something important, and the whole
16 history of our country and in the other States and in this
17 State is the effort to remove the schools from political
18 considerations. We do find -- I can't cite chapter and
19 verse, but our researcher could do it, that in many other
20 States, they do not have the controls that Maryland has
21 that the governor and the Legislature do enter into the

1 operation of the schools, and that this is a part of our
2 system of our philosophy of government, and it is an issue
3 as to whether it should be, and I say that education is
4 more important than these others, whether Mr. Raver will
5 say so or not, in the matter of keeping politics out of
6 it.

7 MR. RAVER: I have said it is more important,
8 but I am not willing to say whether or not the other units
9 should be --

10 DR. JENKINS: I understand. I am not speaking
11 for you.

12 MR. RAVER: Could I try one more aspect of this,
13 Mr. Chairman, which is approaching it from the more
14 mechanical side than a cross-examination approach of Mr.
15 Sachs there.

16 MR. SACHS: Unfortunately, I am a lawyer.

17 THE CHAIRMAN: He is our reporter, Mr. Raver,
18 and I have asked him to go ahead and bring out the various
19 facts for the record.

20 MR. RAVER: Surely.

21 THE CHAIRMAN: I think it is important to have

1 it. He is a very good lawyer, too, I might add. You may
2 never get that in the record again, Steve.

3 MR. RAVER: Let me point out, you see, a part
4 of the problem here is knowing how this school finance
5 business works. We have a State foundation minimum program
6 which guarantees that every child will have a certified
7 teacher, 180 days of school, et cetera, and these are the
8 bases, statutory bases on which the State Board of Educa-
9 tion, including the State Superintendent, must prepare a
10 budget and submit it to the governor. We have talked
11 about the estimates, and the fact that they are subjective
12 to some degree, and I won't repeat that discussion, but
13 let us say now the Board of Education goes to the governor,
14 as we are right now for fiscal '67 and says, We are pro-
15 jecting this budget, \$348 per pupil times 800,000 pupils.
16 That is the key figure in your basic calculation. Then,
17 the next thing they have to do is break this down on the
18 basis of 45 professionals. This means anybody from Assis-
19 tant Superintendent to principal, vice-principal and class-
20 room teachers. Break this down to a requirement of 45
21 professionals per 1000 students, or roughly, 800 times 45.

1 Where is it subjective, if that is what the
2 law says? It is subjective in that, number one, these
3 days of teacher shortage, like others, you can't be absolutely
4 sure how many you can employ, how many are available; and
5 secondly, what kind of certification status they have,
6 whether they have a Master's degree, with one salary or
7 whether they have a standard professional certificate,
8 which means they get another, or whether they will have a
9 provisional certificate, not fully certificated, and get
10 a lower salary. Who shall be qualified to make this
11 statement, Mr. Sachs, or just me. I shouldn't say that,
12 gentlemen.

13 MR. SACHS: That is rhetorical.

14 MR. RAVER: The Budget Director's office, the
15 governor, the State Board of Education?

16 Now, if you yield to the kind of argument Mr.
17 Sachs has made, that the governor ought to be free to do
18 this, let's face it. What is he going to say? He is going
19 to say 800,000 kids, no, 780,000 is all they will have,
20 strike out 20,000 times 340.

21 MR. BOND: In essence, isn't he doing that now?

1 MR. RAVER: No. Before you came in, it was
2 fully discussed.

3 MR. SACHS: Not fully enough discussed.

4 MR. BOND: I was out of the State. I am sorry
5 I was not here.

6 MR. RAVER: I will be glad to discuss it with
7 you or stay as long as you want, but the point is, this
8 has not been done. There have been conversations about
9 this, but in every instance, even by pre-auditing, the
10 State Department's calculations, they have never changed
11 it. This is the fact. Then, suppose the governor says,
12 All right, 30,000 teachers? No. They can't hire that
13 many. We will cut them back to 28,000. He could do this,
14 and does do it, in other States, indeed. The problem is
15 already bad enough, by having the local subdivisions re-
16 fusing to allow enough new teaching positions in some
17 subdivisions, notably Baltimore City, but if the governor
18 can do this also you compound the error and problem.
19 Most of the subdivisions will be able to hire the teachers,
20 and they won't have State aid to do it. That is where it
21 gets chaotic. That is the real problem, gentlemen.

1 MR. SACHS: Mr. Raver, I don't want to belabor
2 this at all. I just want the record to reflect the full-
3 est of your opinion, and I think it is important to draw
4 that out. We discussed, when you had your meeting with
5 Mr. Case the other day, at your request, to bring these
6 matters to the attention of the Committee, and pursuant to
7 that, this meeting was held, but we called to your atten-
8 tion the testimony of Dr. Sensenbaugh and Mr. Perkins,
9 who is the gentleman in Mr. Raine's office who reviews
10 the budget estimates of the Department of Education, and
11 I think it was clear, I don't want to fill up the record
12 twice with the same material, but at Pages, roughly 207 to
13 211 or 212 of the transcript of June 9, at our Committee
14 meeting at the Law School, it was pretty apparent to us
15 that both Mr. Perkins and Mr. Sensenbaugh did state that
16 on this very question of pupils, for example, which was
17 the illustration given to them, there was, whether you
18 want to call it negotiation or discussion or compromise
19 or whatever, if the governor, namely, the State official,
20 felt that the figures originally submitted by the educa-
21 tion people were too high, it was discussed and very often

1 cut. Now it is true that the issue never spilled over so
2 that it was exposed as a rank conflict that had to be
3 resolved, but it just seems clear, as clear as crystal
4 to me, reading this transcript and having^{been}/there that day,
5 that these gentlemen were saying something that appears
6 to be very different than your quotations of Dr. Zimmerman
7 in your statement.

8 DR. JENKINS: Mr. Sachs, I am going to not have
9 the high opinion of you Dick has unless you say that these
10 changes can be made only with the agreement of the State
11 Superintendent. You are leaving, as I see it, you are
12 leaving the impression that the governor can say, This is
13 too much. You have got to cut it. He can say that, but
14 they don't have to cut it. On Page 209 Mr. Perkins says,
15 With their agreement.

16 MR. SACHS: No question about that.

17 DR. JENKINS: That is the key to the thing.

18 MR. RAVEN: You recall I mentioned that, this
19 can be done without their consent. If they want consent,
20 that is between the two of them.

21 MR. SACHS: You are perfectly right in mention-

1 ing that. I didn't mean for a moment to suggest he could
2 do it. The Constitution is clear he cannot. I think the
3 point I seek to make is that in practice, in practice,
4 the constitutional protection afforded the education people
5 has apparently not be invoked.

6 DR. JENKINS: But remember that Mr. Sensenbaugh
7 said, It really doesn't amount to very much. We would
8 never make an issue of it.

9 MR. SACHS: Again, I think the record indicates,
10 and I have already taken too much of the Committee's time,
11 and I will stop, but I think the record does suggest that
12 despite the existence of the constitutional protection,
13 which certainly appears to mean what it says, and despite
14 the limitation on the governor's apparent power, we have
15 been given no evidence to suggest that it has ever been re-
16 lied upon by the school people. I know the argument can
17 be made.

18 DR. JENKINS: I would disagree absolutely.

19 MR. RAVER: Unless you are going to disregard
20 my entire statement.

21 MR. SACHS: I certainly wouldn't suggest that.

1 DR. JENKINS: I think I will, unless he wants
2 to disregard the statements of Mr. Perkins and Dr. Sen-
3 senbaugh.

4 MR. BOND: If the State Board of Education is
5 given complete control over setting cost of the school
6 system, couldn't the tax rate, would it go out of sight
7 if the Board would go out of sight? What check would there
8 be?

9 MR. RAVER: The statutory provisions must be
10 adopted by the Legislature. The only thing, the only case
11 in argument here is where estimates are involved. That
12 is to say, certain things like \$340 per pupil, that is
13 fixed by law, the 45 professionals per 1000 is figured,
14 but you are bound to get into estimates, how many children
15 will be in school next fiscal year, how many teachers will
16 you employ next fiscal year. Therefore, are there two
17 estimates.

18 MR. BOND: You say you trust the Legislature to
19 give you the right number of dollars and right number of
20 pupils to professional ratio, but you are not willing to
21 trust the governor as Chief Executive officer to handle

1 budgetary items, is that correct?

2 MR. RAVER: That is correct. Experience in
3 Maryland prior to 1916 when the change was made indicates
4 they were in bad shape. Gentlemen, you should read as part
5 of your homework, if I may refer to it as that, the Flexner-
6 Bachman Report, it is there in detail, what a sad state
7 the schools in this State had come to prior to 1914, when
8 the Legislature itself passed an act establishing the
9 committee to study it. Then the most amazing thing, the
10 whole new school law, Article 77, or whatever it was then,
11 was completely redrawn as part of the Commission report,
12 and adopted by the Legislature without as much as crossing
13 a T or dotting an I. This was added to Subsection (11).

14 THE CHAIRMAN: Can you give us a copy of that
15 report for use of the Committee?

16 MR. RAVER: I think I can. It is out of print.

17 MR. BROOKS: If we could just borrow one, we
18 can make a copy, if it is not too lengthy and distribute
19 it to the members of the Committee.

20 MR. RAVER: It is large type, about this thick-
21 ness. I will be glad to.

1 Let me add one thing. You fellows are very
2 kind. I know you have a lot more to do. Let me say this:
3 I think, Mr. Sachs, you are a good lawyer, you have cross-
4 examined me pretty well, and just to give some credence
5 to my testimony here, but let me say this: If you don't
6 even want to believe this, I have two suggestions for you.
7 One is that, as we have, I think, established the fact
8 and all you have to do is look at Article 77, and any
9 additions since 1964, and you will see the one point that
10 is in the testimony is dead wrong, and that is net taxable
11 income as a part of the formula. Now, if they made one
12 mistake, why couldn't they have made two in the testimony?

13 MR. SACHS: There is a well-known maxim that
14 suggests they could.

15 MR. RAVER: As to the second one, before you
16 take any action on this, call in Dr. Zimmerman. He might
17 be embarrassed to come because after all Dr. Sensenbaugh
18 is the Superintendent, but Dr. Zimmerman headed up the
19 division research twenty years ago. He became Assistant
20 Superintendent in Charge of Finance, and later the Deputy
21 Superintendent. If any man in the State of Maryland knows

1 how this has worked and can give you direct testimony,
2 not hearsay as I have given you, it is he.

3 MR. SACHS: I believe Dr. Sensenbaugh could
4 be wrong. I don't suggest he was right or wrong.

5 MR. RAVER: I don't know whether the testimony
6 here is correct.

7 THE CHAIRMAN: You admit there is some incon-
8 sistency between what you are saying and what Dr. Zimmerman
9 is supposed to have said to you and what Dr. Sensenbaugh
10 said to the Committee?

11 MR. RAVER: Yes.

12 THE CHAIRMAN: No question about that.

13 MR. RAVER: No question about that. Let's face
14 it.

15 THE CHAIRMAN: I think the Committee has to
16 get the answer to this thing. Whatever is right is what
17 we want to find out.

18 Steve, do you have any more questions?

19 MR. SACHS: No.

20 THE CHAIRMAN: Mr. Smith, do you have any ques-
21 tions?

1 MR. SMITH: I haven't quite caught up yet.

2 THE CHAIRMAN: Let me ask this question.

3 DR. JENKINS: Let me say, I don't know whether
4 you will take Mr. Raver's suggestion, but I would hesitate
5 to ask Mr. Zimmerman to come in the absence of Dr. Sensen-
6 baugh inviting him and coming with him.

7 THE CHAIRMAN: I would certainly not want to
8 do anything that would embarrass Dr. Zimmerman, whom I
9 have known for almost twenty years.

10 DR. JENKINS: All right, Dr. Sensenbaugh.

11 THE CHAIRMAN: I haven't known Dr. Sensenbaugh
12 that long, but I am certain we don't want to do anything
13 to embarrass him, either.

14 Does anybody else have any questions?

15 I have two questions, Mr. Raver. One is, I
16 think you said that this provision in Subsection (11) of
17 Section 52 of Article III that we are discussing in your
18 judgment is the most important single protection that the
19 system has against political interference. Am I quoting
20 you correctly?

21 MR. RAVEN: Yes, sir, this is my belief.

1 THE CHAIRMAN: Would it, in your judgment, be
2 more important than the provision in the Constitution
3 which prevents the General Assembly from cutting the
4 budget?

5 MR. RAVER: Well, yes, I think so, because you
6 see, in my opinion, watching things in Annapolis, the Chief
7 Executive is elected and anyone thinking that he does it
8 repeatedly gets buried in his total record, but if the
9 Legislature, and I certainly want to make the suggestion
10 here that I wouldn't trade one for the other, but I do
11 believe that Subsection (11) is number one important
12 and Section 6 is important.

13 DR. JENKINS: I think it is an unfair question,
14 like asking which eye would I rather lose.

15 MR. RAVER: That is right. I said which I thought
16 was the most single important guarantee, and I think it is.

17 THE CHAIRMAN: Both of you educators are anticipat-
18 ing what I might ask, and in so anticipating, I think you
19 have started a long ways down in your own behalf, digging,
20 shall we say, the grave. Well, I am not going to ask
21 that question. I just wanted to find out why you felt it

1 was.

2 DR. JENKINS: I think the worst one would be
3 to have the Superintendent of the schools appointed by
4 the governor. There is no need to take time with that one.

5 THE CHAIRMAN: I was going to come to that one.
6 I would like to ask you this: If the Committee goes along
7 with the recommendation that you are making, Mr. Raver,
8 namely, that the budget of the State Department of Educa-
9 tion shall be untouchable by the governor, then to that
10 extent at least fiscal autonomy has been granted by the
11 Constitution to the State school system. Would you agree
12 then that the same autonomy should be granted to the
13 University of Maryland?

14 MR. RAVER: They are different. You can probably
15 equate one to the other, but what you say to the University
16 of Maryland is that we will give you fiscal autonomy. We
17 are going to give you a lump sum of money. Do with it as
18 you please. The kind of fiscal autonomy you have mentioned
19 is not that. It is a line-by-line item, and the State
20 Department, after it gets this money, cannot switch it
21 around and take money for teachers and spend for something

1 else. In other words, they can't take money out of, shall
2 we say Adult Education or Handicapped, and spend it for higher
3 teachers' salaries. They do not have this kind of
4 autonomy. I suppose you could equate one with the other.
5 This was the basis of my argument earlier. I don't
6 have any quarrel with giving the University of Maryland
7 autonomy in the Constitution, but somehow or another, it
8 seems to me a little illogical to lift them to constitu-
9 tional status and the same time take away from the consti-
10 tutional status of public education, so I guess I would
11 answer to you, I suppose these are equitable..

12 THE CHAIRMAN: Of course, we didn't have the
13 University of Maryland in 1916.

14 MR. RAVER: We had a pretty good example of it.
15 It is quoted.

16 THE CHAIRMAN: No. The University of Maryland,
17 I beg your pardon, this is something I happen to know some-
18 thing about, wasn't created until 1920.

19 MR. RAVER: It was there as a State agricultural
20 school or dental school.

21 THE CHAIRMAN: Yes, but run by different boards

1 under entirely different laws. That is neither here nor
2 there. This is education. So is the system of State
3 colleges, of which Morgan will be a part, I guess, one of
4 these fine days.

5 MR. RAVER: They are a part of the State col-
6 lege system.

7 THE CHAIRMAN: It is not a full partner yet,
8 is it?

9 DR. JENKINS: Let's say it is not under the
10 purview of the State.

11 THE CHAIRMAN: That is right. Wouldn't it be
12 perfectly logical for them to have the same kind of
13 autonomy?

14 MR. RAVER: I think so. I cannot see the
15 reason for -- in other words, I don't buy the University
16 of Maryland's point of view that they alone should have
17 this great independence because of research, et cetera. I
18 taught in college. That is where my teaching experience
19 was. Somehow or another I can't see there is this great
20 need for independence on the part of the University any
21 more than Morgan and State College.

1 MR. BOND: How about the junior college? We
2 have Dr. Bard on our Commission.

3 MR. RAVER: That is a different kind of a story.
4 Those of us in my organization are sort of disturbed
5 about the fact that they want to go out under separate board.
6 We think they should be kept fairly close to public schools.
7 I won't get into the argument why at this point. I don't
8 have any great feeling about the autonomy of the Univer-
9 sity of Maryland except in kind of a logical comparison
10 to the rest of higher education and to the public school
11 system. We do not ask the same kind of autonomy. We ask
12 for rather a security, freedom from political control of
13 funds.

14 THE CHAIRMAN: It would logically follow, would
15 it not, that other educational institutions should be
16 granted the same degree of security?

17 MR. RAVER: I think it would. I am surprised if
18 Dr. Bard hasn't already said, as Mr. Bond said, What about
19 the junior colleges or State colleges.

20 MR. BOND: He has.

21 MR. RAVER: I think that is perfectly plausible.

1 THE CHAIRMAN: One last question, Mr. Raver.
2 Just why do you think that the elimination of the clause
3 that we have been discussing in Subsection (11) of Section
4 52 would generate a negative attitude in the minds of many
5 people toward the revision of the Constitution? Do you
6 really think that this would, if the Commission came up
7 with this kind of a recommendation, that the people would
8 certainly in public education, would turn against the
9 Constitution?

10 MR. BOND: A whole idea of the Constitution?

11 THE CHAIRMAN: Yes.

12 MR. RAVER: I think they would because I think
13 fear groundless or otherwise -- I personally don't think
14 it is groundless, because I have indicated that I am con-
15 cerned -- but this is something for which the people of
16 this State have been proud for many years. Let me give
17 you one example of this. When we went from a biennial
18 legislative session to an annual legislative session, in
19 what, fifteen years ago --

20 THE CHAIRMAN: 1948 --

21 MR. RAVER: Close to twenty, eighteen years ago,

1 the bill appeared in Annapolis from this same portion of
2 Article III, and the bill as printed, and so help me, it
3 was discovered by the Director of Research of the State
4 Department of Education, Miss Bessie Stern, and the bill
5 suddenly appeared with brackets around this very phrase,
6 public education, and we sent the word out. That is all
7 we did, sent the word out. You have never seen such a
8 crowd in Annapolis. They mobbed the place, frightened
9 about this, and what did the Judiciary Committee say? Oh,
10 why, this is horrible. Why, this is a printer's error,
11 and gentlemen, you know it was never a printer's error.
12 Printers don't make that kind of mistake. It was too
13 far removed from the part they were amending, but the Com-
14 mittee very quickly amended it back in. That is the fear
15 of the people of this State.

16 THE CHAIRMAN: I would like very much to read
17 to you a part of the record that had something to do
18 with that, if I can put my finger on it, because you are
19 raising now a subject of primary importance, I think.

20 MR. BOND: I have one other question.

21 THE CHAIRMAN: Why don't you ask him that?

1 MR. BOND: I am also on the Executive Committee
2 of the Constitutional Commission, and we are concerned
3 about a so-called cabinet-type form of State government.
4 What is your belief as to having the State Superintendent
5 of Schools serve at the pleasure of the government? Do
6 you have any feeling on that at all, sir? John, don't you
7 think that is a pertinent question?

8 MR. BROOKS: Yes, sir.

9 MR. RAVER: I think this would also -- I have
10 to be careful how I choose my words, because I have said
11 that insofar as the recommendations under discussion,
12 removal of public education in 52 would be the most impor-
13 tant and most serious. I think I would be free to say
14 that such a proposal would be equally disturbing, because
15 to date it has no publicity given to this, except as
16 Mr. Power at this meeting -- Mr. Brooks, did you say this
17 was not pertinent out there in terms of what we hear here?

18 MR. BROOKS: What he said, yes, it is not per-
19 tinent, but you can comment on it.

20 MR. RAVER: It ^{is} mighty close to it.

21 MR. BROOKS: I will say he did qualify his re-

1 marks, saying that he was making suggestions of things
2 that were of concern throughout the State about possible
3 need for constitutional restriction. He did not himself
4 advocate the things you attribute to him.

5 MR. RAVER: Mr. Bond says it is under consider-
6 ation.

7 MR. BOND: It is under active consideration as
8 to whether the governor should have a cabinet answerable
9 to him.

10 DR. JENKINS: It didn't yet come to the Com-
11 mission.

12 MR. BOND: No, not yet.

13 MR. RAVER: This would be equally as horrifying,
14 I would say, as removal of public education in 52.

15 MR. BOND: That is all I want to hear.

16 MR. RAVER: I didn't come here with statistics,
17 but I would urge your Committee to study the results in
18 how education works in the States where the State superin-
19 tendent is appointed by the governor, and you will find,
20 sir, that he spends more of his time campaigning for re-
21 appointment and politicking than he does running the

1 schools. You should at least get some information from
2 a group, say, the National Council of Chief State School
3 Officers, from the National Association of Boards of
4 Education, and others on this point, because I think you
5 will find that their recommendations are solidly for the
6 appointment of the chief administrative officer by a lay
7 board on the basis of professional qualifications, not
8 political.

9 DR. JENKINS: Mr. Raver, if the State Superin-
10 tendent is responsible to the governor, you don't need
11 to worry about this clause in here.

12 MR. BOND: I might add for the record on this
13 that there are other department heads in the State who are
14 not in sympathy with what Mr. Raver has said at all, but
15 be that as it may, I think it would be good to have a copy
16 of this page of the transcript sent to Judge Adkins' Com-
17 mittee.

18 THE CHAIRMAN: Also Mrs. Bothe's Committee.

19 MR. BOND: We had no idea that this feeling
20 existed.

21 THE CHAIRMAN: May I get back to the other

1 subject? Mr. Raver, on Page 174 of the record of the hear-
2 ing on June 9, I said the following, in reference to a
3 bill which I called, quote, The bracket bill, unquote, and
4 you might wish to correct this, and that is why I am read-
5 ing it to you. I said, This was a bill which found its
6 way into the legislative hopper at the time the Sherbow
7 Commission's Report was implemented. It would have, in
8 effect, struck out the preferential treatment for public
9 schools so far as the governor was concerned, and would
10 give him authority to treat their suggested budget just as
11 every other department's suggested budget is treated, to
12 the extent that he could as provided by law. They always
13 put that phrase in, as provided by law. That will take
14 care of everything. Of course, there was a big political
15 whingding, still quoting, about that. Don Pullen went down
16 to Annapolis and stirred around in the nuts and bolts, and
17 the nuts and bolts of it was, of course, that they killed
18 the bill and nobody would ever admit to the authorship of
19 the bill, which is another very interesting thing, although
20 it was stated at the time that Dr. Flack had done it. Now,
21 why accuse Dr. Flack, I don't know, but anyway, there hasn't

1 been any serious, so far as I know, assault on this pro-
2 vision, if you want to call it that, or questioning this
3 provision since that time.

4 That was the statement I made.

5 MR. RAVER: Thank you for your statement, Mr.
6 Chairman.

7 THE CHAIRMAN: That is a somewhat accurate
8 statement. Then, I asked Dr. Sensenbaugh, Were you a
9 part of the bracket bill fight? Do you remember that?
10 Dr. Sensenbaugh, No. The Chairman, Weren't you in the
11 system in 1947, because I really thought, I am saying this
12 parenthetically, everybody in the school system was in
13 Annapolis, and he said, I was an Assistant Superintendent
14 in Baltimore County.

15 MR. RAVER: I thought he was still in the Navy.

16 THE CHAIRMAN: I said, Baltimore County, and
17 he said, Yes, I wasn't involved.

18 I take it from what you said that if the Com-
19 mission went along with a suggestion/^{that}may or may not have
20 been made to, in effect, remove this provision, that the
21 same kind of power play would be put on in your judgment

1 that was put on at that time, because that was a real one.

2 MR. RAVER: I can't pass over lightly your use
3 of the word, power play, Mr. Case, because I think you
4 realize that a great deal of the promotion of legislative
5 activities is developed through the office of the Maryland
6 State Teachers Association. I was so near the beginning
7 of my office, we were so poorly organized, that we could
8 have done very little by promoting a power play at that
9 time. There was a notice went out to PTA's and teachers
10 groups, superintendents, et cetera, that this bill was in
11 Annapolis, and the crowd appeared. I think it is pretty
12 good evidence of how disturbed they were about it.

13 THE CHAIRMAN: Remember Dr. Pullen leading the
14 fight, taking several busloads of people down, as I recall
15 it.

16 MR. RAVER: I don't recall the business, but I
17 know they mobbed the place. I was trying to find for Mr.
18 Bond a statement.

19 THE CHAIRMAN: That is all the questions I have.

20 MR. RAVER: Mr. Bond, this is lifted from the
21 report that I referred to. It would be going back to this

1 pre-1916 status. The schools were bad. The governor
2 sat --

3 MR. BOND: He sat on the School Board?

4 MR. RAVER: That is right. He appointed the
5 State Superintendent. What happens in this, pretty soon
6 you get an absolutely non-uniform treatment of schools,
7 and you destroy what we have worked for for fifty years,
8 1916 to 1966, to achieve, namely, a uniform public system
9 of public education free of political control, and so I
10 am almost afraid to mention these words here, but --

11 THE CHAIRMAN: Mention any word you want.

12 MR. RAVER: So help me, I do think there will
13 be a very real fright and fear on the people because,
14 naturally, we have over the years reminded them of the
15 Flexner-Bachman Report, and what has been accomplished in
16 public education with freedom from political control, et
17 cetera, and people in this State think highly of it, and
18 it will, of course, be either Dr. Sensenbaugh's job or
19 mine or someone's to inform teachers' groups and interested
20 lay groups of the recommendations of the Commission, and the
21 subcommittees, and I believe they will be frightened. I

1 know of no other way to put it, Mr. Case.

2 THE CHAIRMAN: I certainly congratulate you
3 for your candor. I think we certainly want to know.

4 MR. BOND: Can't we tell Mr. Raver certainly it
5 is not the intent of anybody on this Committee or Commis-
6 sion to in any way hinder the educational system in the
7 State of Maryland? It should be made abundantly clear to
8 him.

9 MR. RAVER: I am aware of that. If it weren't
10 for that machine, I would use a very strong expression.
11 When these recommendations come in, we think, What will
12 happen to the public schools of the State?

13 THE CHAIRMAN: Do you mean you really got that
14 feeling you got from the Report of the Constitutional
15 Convention?

16 MR. RAVER: Plus the meeting of the Seminar. I
17 can't disassociate this from what Mr. Brooks says, because
18 when Mr. Bond comes in, he says, We are considering that
19 very proposal. That makes me feel worse.

20 MR. BOND: We are considering a cabinet-type
21 government.

1 THE CHAIRMAN: I want to thank you very much,
2 Mr. Raver. It has been very informative. Does everybody
3 have a copy of the statement?

4 MR. BOND: Yes.

5 MR. RAVER: If our attorneys come up with a
6 serious legal opinion, on Section 3 --

7 THE CHAIRMAN: Yes, I think anything.

8 MR. BROOKS: You are talking about Section 3,
9 Article VIII?

10 MR. RAVER: Yes.

11 MR. BROOKS: We would appreciate one.

12 THE CHAIRMAN: We would really like to have one.

13 MR. BROOKS: We will give it to the pertinent
14 Committees, not only this one, but the other Committees
15 involved.

16 MR. RAVER: I want to thank you all for your
17 time, attention, courtesy.

18 (Meeting concluded at 4:40 p.m.)
19 -----
20
21



1 CONSTITUTIONAL CONVENTION COMMISSION

2 Hearing held before the Committee on State
3 Finance and Taxation and the Committee on Mis-
4 cellaneous Provisions on Friday, July 29, 1966,
5 at 9 o'clock a.m., at the University of Maryland,
6 School of Law, Baltimore, Maryland.

7
8 BEFORE:

9 Richard W. Case, Esquire
10 Chairman of the Committee on State
11 Finance and Taxation
12 Stanford Hoff, Esquire
13 Dr. Martin D. Jenkins
14 Mr. L. Mercer Smith
15 Stephen H. Sachs, Esquire, Reporter

16 Mrs. Elsbeth Bothe,
17 Chairman of the Committee on
18 Miscellaneous Provisions
19 Mrs. Leah S. Freedlander
20 Walter R. Haile, Esquire

21 ALSO PRESENT:

 H. Vernon Eney, Esquire,
 Chairman of the Commission
 John C. Brooks, Esquire, Executive
 Director of the Commission

 Reported by:
 A.A.Castiglione

1 MR. CASE: Ladies and gentlemen, the meeting
2 will come to order. This meeting has been called to
3 clear up some points that were made in the record of
4 two hearings which the Committee on State Finance and
5 Taxation heretofore held.

6 Before getting into that, let me make one
7 point abundantly clear, so there cannot be any mis-
8 understanding on anybody's part and that is, nothing
9 that this Committee has done and nothing that I have
10 heard said during any of the deliberations would in
11 any way indicate that the Committee is opposed to a
12 strong progressive system of public schools for the
13 State. Quite to the contrary, personally, as a former
14 member of the State Board of Education and a current
15 member of the Board of Regents of the University, I
16 can hardly be other than for a strong system of public
17 education and I know that my colleagues on the Com-
18 mittee feel just as I do about this.

19 For the record, also I should like to say
20 that the Committee has already passed, with approval,
21 a proposal that the legislature should not be permitted

1 or given the power to reduce the Governor's budget as
2 it applies to public education; more specifically,
3 public schools. This point has been approved and will
4 be recommended to the Commission at the appropriate
5 time.

6 What we are here involved with is a section,
7 a subsection of Section 52 of Article 3, being sub-
8 section 11, and this subsection provides in part as
9 follows:

10 "The estimates for the legislative depart-
11 ment, certified by the presiding officer of each House,
12 of the Judiciary, as provided by law, certified by the
13 Comptroller, and for the public schools, as provided
14 by law, shall be transmitted to the Governor, in such
15 form and at such times as he shall direct, and shall
16 be included in the Budget without revision."

17 Now, at our prior hearing of June 9, 1966,
18 this particular part of subsection 11 of Section 52
19 was looked at at great length and, subsequently, the
20 Committee had before it Mr. Milson Raver who is the
21 executive secretary of the Maryland State Teachers

1 Association, and I think you all will remember that
2 Mr. Raver gave not only a prepared statement, but a
3 great deal of testimony upon examination by members
4 of the Committee and the reporter, Mr. Sachs, and
5 there were seemingly two areas of disagreement between
6 the testimony that Mr. Raver gave and the statements
7 made by members of the State Department of Education
8 who appeared before the Committee on June 9th.

9 Let me say that one of those areas of dis-
10 agreement has been resolved to the Committee's satis-
11 faction, and I don't think we will have to take any
12 time this morning to discuss that point. I have
13 reference to the question of whether or not net taxable
14 ordinary income is a part of the formula for determining
15 the amount of State contributions to the basic program.

16 I think it is perfectly clear from a review
17 of the statutes and from a review of a pamphlet called
18 Financing Education in our Time for Maryland, which
19 Dr. Sensenbaugh kindly forwarded to the Chairman and
20 other members of the Committee after the last hearing,
21 that net taxable ordinary income is a factor which is

1 added to the assessed value of real property as adjusted
2 before the 1.228 per cent factor is applied. So, there
3 is really no reason for further inquiry into this
4 point and any inconsistencies or misconceptions that
5 may be found in the record can be resolved in the light
6 of what I have just said.

7 The second thing, though, which this meeting
8 has been called specifically to resolve is a fact
9 question, really, and it is whether or not the Bureau
10 of the Budget does in fact modify or otherwise suggest
11 changes in the State Department of Education's budget
12 before that budget is finalized as a part of the budget
13 document which ultimately becomes the budget bill and
14 is introduced into the General Assembly.

15 With reference to this point, I should like
16 to call the members of the Committee's attention to
17 three separate passages in the record made before the
18 Committee on June 9, 1966. If you will bear with me,
19 I will try to find these.

20 The first passage that I wish to call to
21 the attention of the members of the Committee is found

1 on Page 183, in which I said: "In other words, it
2 seems to me to be a very obsolete provision of the
3 Constitution," perhaps speaking more in ignorance than
4 in knowledgeability, because I was talking about the
5 very point we are now discussing. Continuing the
6 quote, "and all I know about it is what I have been
7 told when I was a member of the State Board and being
8 a fairly close friend of Dr. Pullen for many, many
9 years, but as I understand it, it was put in the Con-
10 stitution to keep the politicians from playing poli-
11 tics with the school system."

12 Mr. Bond, a member of our Commission, said:
13 "I think he said the Governor has no discretion,"
14 referring to the section.

15 "The Chairman: No discretion, right.

16 "Dr. Sensenbaugh: He has no discretion,
17 other than the fact that the figures can be refined
18 by going through his Budget Bureau and Mr. Perkins,
19 for instance, being an analyst, has every right to
20 check our figures for statistics purposes and so does
21 the --" and then I broke in and there are other points

1 which are not exactly germane.

2 So, at the outset, it will be seen that Dr.
3 Sensenbaugh stated for the record that the figures can
4 be refined by the Budget Bureau. Now, what figures
5 were we talking about at that particular time were the
6 input of pupil population into the formula, because
7 that is really the only figure which can be refined,
8 as I understand it. The assessable basis is taken from
9 the last year's basis; hence, it is fixed. Income is
10 taken from two years past; hence, it is fixed.

11 Of course, the 1.228 is fixed, so that the
12 only thing that is a variable in this whole equation
13 is the pupil projection, and it was those figures that
14 Dr. Sensenbaugh had in mind.

15 Now, again, beginning at Page 201 of the
16 transcript, down in the middle of the page, at Line 9,
17 the Committee will see Dr. Sensenbaugh said, and I
18 am quoting:

19 "That's right. It's \$340 times the amount
20 of pupils, that's the whole thing, and 1.228 on the
21 tax rate."

1 Mr. Donaho, who was a witness before the
2 Committee that day and a well-known expert on budget
3 and financial matters, a man who, incidentally, has
4 had more to do than anybody else with the so-called
5 Wolf Committee Report of the Sobeloff Commission's
6 final report on the State Budget in the early 1950's,
7 and he said:

8 "Mr. Chairman, may I make some observation
9 or put it in the form of a question? Mr. Perkins,
10 when you review the budget, do you then have the oppor-
11 tunity to establish your own calculation as to how
12 many pupils there are per county and other factors
13 that are involved? Isn't that correct?

14 "Mr. Perkins: Certainly.

15 "Mr. Donaho: And you can debate this with
16 the Superintendent of Education or public instruction
17 as to whether this is correct or not?

18 "Mr. Perkins: Yes.

19 "Mr. Donaho: And the Governor can arrive
20 at his own determination based upon these statistics?

21 "Mr. Perkins: Exactly."

1 So, here again, Mr. Perkins, the representa-
2 tive of the Budget Bureau made it perfectly clear that
3 the Governor through the Budget Bureau has this power
4 to review the State Department of Education's budget
5 before it is finalized.

6 Now, at Page 208 is the third of the three
7 parts of the transcript I wish to call to your atten-
8 tion. I put an example of this to Mr. Perkins and to
9 Dr. Sensenbaugh in this way:

10 "The Chairman: Let me put it to you by
11 example, Mr. Perkins. Suppose this \$340 times the
12 number of students, we will say that the number that
13 Dr. Sensenbaugh comes up with is 1,450,000. I'm just
14 pulling a figure out of the air, 1,450,000. Now, you
15 being a conscientious budget analyst, you have looked
16 into this thing and you know darn well that it is only
17 going to be 1,400,000, and so you argue back and forth
18 and neither will give.

19 "So, finally Dr. Sensenbaugh says, well,
20 the State Board is meeting tomorrow and I am going to
21 present the budget to them on the basis of 1,450,000

1 students and I am very sorry, Mr. Perkins, but that is
2 the way it is, and that is what I am going to ask my
3 Board to approve, and he does, and the Board approves
4 it and the budget now goes to the Governor.

5 "What, if anything, can you or the Governor
6 or anyone do to bring this figure back to 1,400,000?

7 "Mr. Sachs: That is my question.

8 "Mr. Perkins: We have done it. We have
9 revised figures that the State Department of Education
10 presented to us on the basis -- and you are only talk-
11 ing about one thing, pupils. So, if we feel the pupil
12 estimates are too high, we can reduce them. Every
13 pupil that you reduce, you are reducing the over-all
14 budget request by \$340 essentially."

15 So, that was the record the Committee had
16 before it when Mr. Raver came before the Committee last
17 Monday, and Mr. Raver stated unequivocally that the
18 Bureau of the Budget had never altered, changed or
19 modified the budget which the State Department had
20 submitted.

21 Now, this was to the minds of the Committee

1 an irreconcilable conflict and this meeting has been
2 called to find out just what the facts are. So, with
3 that somewhat lengthy opening statement, Dr. Sensenbaugh,
4 I see you are here with many of your good people and
5 old friends of mine and I should like, now, sir, if
6 you are in a position to discuss this subject, I would
7 like to open the meeting by asking you just what are
8 the facts?

9 DR. JAMES A. SENSENBAUGH: May I introduce
10 first --

11 MR. CASE: I wish you would.

12 DR. SENSENBAUGH: Dr. Quentin L. Earhart,
13 who is the Assistant Superintendent of Finance. Dr.
14 Earhart has the position that Mr. Sartorius had at one
15 time in the State Department. We couldn't get Dr.
16 Zimmerman, he is on vacation, I thought we would ask
17 Mr. Sartorius if he would come in and perhaps talk in
18 terms of the record back in the early days. So, Mr.
19 Sartorius, as you know, is now the Superintendent in
20 Baltimore County.

21 MR. CASE: I certainly do.

1 DR. SENSENBAUGH: And Mr. Perkins represents
2 the Budget Bureau. In regard to the comments that were
3 made, I don't think I am at all different from what Mr.
4 Raver said about the purpose of this budget being sub-
5 mitted without revision. Now, it is a question of what
6 you mean by the word revision. I think that semantics
7 here is what is holding us up.

8 MR. CASE: Undoubtedly, that is true.

9 DR. SENSENBAUGH: To me, revision is the
10 Governor making changes in the budget. This may be
11 major changes, it may be minor changes. Everything we
12 are talking about here hinges over a point of view
13 concerning what kind of a change is made, and this
14 comes down to just one element which is flexible, and
15 this is the number of students, perhaps, that are in
16 the schools.

17 Now, certainly, if the Budget Bureau or if
18 Mr. Cooper, who is the fiscal research representative
19 for the legislature, in analyzing our records finds
20 that there are errors or what they feel might be an
21 overly ambitious estimation of numbers of students and

1 if we, after school opens, check back with the school
2 systems and find that they are not having enrollment
3 that they had anticipated, certainly we are going to
4 make changes; but I say every change that is made in
5 the budget is a Department change and is not a final
6 change made by the Governor or the Governor's office.
7 It has to be assented to by us and, to my knowledge,
8 it always has been.

9 Therefore, I say it is a Department budget
10 and a Department figure. We are ready for any source.
11 It could be a PTA person, it could be a businessman.
12 If he can call errors to our attention, we will accept
13 those errors, if we find that they are errors. It
14 doesn't have to be the Governor's office. It could be
15 the legislature, and I think this is where you people are
16 all hung up on, what do we mean by these changes.

17 MR. CASE: Well, I think the issue is
18 whether or not the Governor could require a change.

19 DR. SENSENBAUGH: I don't think he can. I
20 think that --

21 MR. CASE: Even if the Governor, based on

1 the best statistical evidence available, could demon-
2 strate so that any court or jury in the land would
3 acknowledge that he was correct in showing that you
4 had a mistake, this constitutional provision protects
5 you from recognizing that mistake unless you want to.

6 DR. SENSENBAUGH: Well, I don't think that
7 a situation like that, a pointed mistake, would go un-
8 recognized.

9 MR. CASE: Well, the issue is not whether
10 you would or wouldn't recognize it. It is whether you
11 would have to recognize it, whether you could be re-
12 quired to recognize it.

13 DR. SENSENBAUGH: I think we're missing the
14 whole point of this provision. The purpose of that
15 provision means, it is designed so that the government,
16 the executive department cannot make major changes in
17 the coverage that the budget is supposed to give. I
18 think we are grabbing here at straws when we talk
19 about small figures and computations.

20 MR. CASE: Well, maybe they wouldn't be
21 small figures. They could be big figures.

1 DR. SENSENBAUGH: I'm talking in terms of
2 program, and the only thing we're talking about is the
3 State Aid Budget, the part that goes out to the twenty-
4 four school systems. We're not talking at all about
5 our Department budget. Now, our Department budget is
6 subject to revision and cutting and everything else,
7 just the same as any other department's budget; but
8 here is a basic commitment by the State to the twenty-
9 four local systems which is a portion of their income
10 that they have to use in balancing out their budget
11 and it has to be done well in advance of the time the
12 General Assembly meets.

13 They make up their budgets, and Dr. Earhart
14 can tell you what time the school budget has to be made
15 up, Mr. Sartorius knows what time his budget has to be
16 submitted to the County officials for action, and I
17 presume this is before the General Assembly has even
18 a chance to act on our budget. So, we, in accordance
19 with the law, have a commitment to the school systems.

20 Now, if the State doesn't want this commit-
21 ment, then they ought to change the laws during the

1 General Assembly for the following year. There is
2 flexibility in this whole thing.

3 MR. CASE: I think the issue is how the
4 commitment is to be met. Everybody recognizes the
5 fact that the commitment is there, but the question is
6 just how you meet it with dollars.

7 DR. SENSENBAUGH: Yes, but this was not the
8 intent in our last conversation with Mr. Donaho. He
9 had a different point of view and you are giving a
10 great deal of weight to that.

11 MR. CASE: No. Now, let me urge upon you
12 the fact that the Committee has not given any more
13 weight to one witness as against another. Mr. Donaho
14 has a very colorful way of expressing himself and I
15 think that --

16 DR. SENSENBAUGH: He did it in writing.

17 MR. CASE: And I think particularly in your
18 case, he has a vendetta, which may or may not be appro-
19 priate, but the Committee can weigh all of these things
20 and I hope in a judicious manner and come up with a
21 final result, but the issue is basically then the

1 question of the estimation of the number of pupils.

2 DR. SENSENBAUGH: This is right.

3 MR. CASE: And again I come back to my
4 example and ask you now whether or not Mr. Perkins
5 was right when he said that the number or estimate
6 that you have made has been changed?

7 DR. SENSENBAUGH: I doubt -- I don't know
8 what Mr. Perkins' internal knowledge is of the budget,
9 but any budget, to my knowledge, in the past two years
10 that went before the General Assembly was our our bud-
11 get.

12 Now, sure, Dr. Earhart works with Mr.
13 Perkins and we also work with Paul Cooper at the
14 General Assembly level. These three people certainly,
15 I hope, were checking on each other and refining figures
16 and statistics. This is why we employ people like this,
17 and we want the budget that finally goes in before the
18 General Assembly to be the best figures we know how to
19 arrive at; but that budget is our budget.

20 MR. CASE: Not the Governor's budget?

21 DR. SENSENBAUGH: Well, it's the Governor's

1 budget because he incorporates that section of State
2 aid. Now, the other part is not our budget because
3 we have a lot of cuts in that portion that we don't
4 always agree with, but they are there.

5 MR. CASE: All right, members of the Commit-
6 tee? Mr. Smith, do you have any questions?

7 MR. SMITH: No.

8 MR. CASE: Mr. Hoff?

9 MR. HOFF: No.

10 MR. CASE: We have and are happy to welcome
11 two members of the Miscellaneous Provisions Committee.
12 Mrs. Freedlander, do you have any questions?

13 MRS. FREEDLANDER: No.

14 MR. CASE: Mr. Haile?

15 MR. HAILE: No, thank you.

16 MR. CASE: Steve?

17 MR. SACHS: I would like, if I may, just to
18 ask one or two opinions of Dr. Sensenbaugh. Would you
19 agree, Dr. Sensenbaugh, that under the present con-
20 stitutional provision, in subsection 11, you could, if
21 you wanted, not even meet with Mr. Perkins or any

1 representatives of the Budget Department?

2 DR. SENSENBAUGH: I suppose so.

3 MR. SACHS: I am not suggesting, of course,
4 that you would, but --

5 DR. SENSENBAUGH: After all, bread and
6 butter comes from another source, too.

7 MR. SACHS: I know.

8 DR. SENSENBAUGH: We have a staff and our
9 own internal department that we have to bow down to
10 them for. All we're talking about, remember, now,
11 is a lump sum of money that goes out to the counties
12 on which they can firmly budget their future and if
13 the commitment should be changed, those figures would
14 be changed for the following year. It is too late when
15 this budget is before the General Assembly for people
16 to tamper with those statistics, unless there are errors.

17 MR. SACHS: Am I correct, Dr. Sensenbaugh,
18 in my understanding, which is that the Department, to
19 your knowledge, has never had occasion to invoke this
20 constitutional protection that we are talking about?

21 DR. SENSENBAUGH: I don't know. To my

1 knowledge, in the two years I've been with it, we've
2 gotten along very well with the budget people and I
3 hope it continues that way. We've gotten along very
4 well with the Governor and also with the fiscal
5 research in Annapolis, and reasonable people have to
6 be receptive to having errors pointed out to them, if
7 this occurs.

8 MR. SACHS: That's all I have.

9 MR. CASE: May the record show that the
10 Chairman is mortified by the fact that he overlooked
11 one of his most distinguished Committee members in
12 asking for questions.

13 DR. JENKINS: I will raise a question with-
14 out the Chairman's recognition.

15 MR. CASE: That is Dr. Jenkins.

16 DR. JENKINS: My feelings are not hurt.

17 MR. CASE: Well, mine are. Do you have any
18 questions, Dr. Jenkins?

19 DR. JENKINS: No, thank you, not at this
20 point.

21 MR. CASE: We have also the big chairman here

1 this morning, Mr. Eney, and this is the first time he
2 has honored us with his presence at this Committee.

3 Mr. Eney, do you have any questions?

4 MR. ENEY: I would like to ask about one
5 thing, if I may. Dr. Sensenbaugh, in a very general
6 sense, the preparation of the county school budget
7 proceeds along pretty much the same lines?

8 DR. SENSENBAUGH: Yes.

9 MR. ENEY: The budget, insofar as State aid
10 is concerned, is based on estimates of the number of
11 pupils, just as your budget is, but I understand that
12 when it comes to paying out to the counties, the State
13 Board no longer relies on estimates, but bases it only
14 on actual pupil count?

15 DR. SENSENBAUGH: Yes.

16 MR. ENEY: So, you could have a situation
17 where your budget is approved and let's say that for
18 a given county you have a figure based on an estimate
19 of 10,000 pupils, and the county budget is based on
20 the same thing and their teacher requirements and so
21 forth, but when the school year starts, you find out

1 that they have 9,000 pupils and what you actually pay
2 them is on the basis of 9,000.

3 What happens to the money in your budget
4 represented by the 340 times that extra thousand?

5 DR. SENSENBAUGH: It reverts to the State
6 treasury, and this is the way I think it should be.
7 We should not have the opportunity of using that money
8 and apply it to anything else.

9 MR. ENEY: Then that means, insofar as State
10 aid is concerned, if there are mistakes made in the
11 estimates, it all comes out in the wash eventually?

12 DR. SENSENBAUGH: It all comes back to the
13 State. They would have that much more surplus for the
14 next year to help balance the next year's budget. The
15 State doesn't lose a cent by this provision. It's
16 simply a guarantee that the money is going to be there
17 for the school systems.

18 MR. ENEY: This doesn't apply to anything
19 except the State aid counties?

20 DR. SENSENBAUGH: Right.

21 MR. ENEY: And if the rest of the State

1 school budget of X dollars is high in any particular
2 portion of it in the estimate, the School Board can
3 just spend the money for some other educational pur-
4 pose within the budget?

5 DR. SENSENBAUGH: I don't follow you on this
6 one.

7 MR. CASE: Not without a budget amendment,
8 Vernon. It has to be approved.

9 MR. ENEY: Well, I didn't mean it quite that
10 broadly, but other than State aid, they have a budget
11 that is made up of many items.

12 DR. SENSENBAUGH: Yes.

13 MR. ENEY: Now, within limitations, you can
14 transfer funds within the budget.

15 DR. SENSENBAUGH: The only money we give to
16 the local systems would be State aid.

17 MR. ENEY: I'm not talking about what goes
18 to local systems.

19 DR. SENSENBAUGH: You're talking about our
20 own internal department?

21 MR. ENEY: Yes. What I'm getting at, that

1 money, if there were any surplus, would not revert?

2 DR. SENSENBAUGH: That reverts, too. For
3 instance, you set up your staff according to salaries.
4 If you don't employ a staff member, that salary accumu-
5 lates and reverts to the State treasury. The State is
6 not losing money by this system at all.

7 MR. SMITH: As I understand your answer to
8 Mr. Eney's question, if one county comes up short, the
9 money automatically reverts, although the money was
10 appropriated on the basis of the total State estimate.
11 Can you move it from one county to another?

12 DR. SENSENBAUGH: Let me ask these fellows.

13 DR. EARHART: Yes. The total amount of money
14 available for State aid can be applied to State aid in
15 any of the twenty-four districts. In other words, if
16 there is one high and one low, it may be balanced.

17 MR. SMITH: If there are 50,000 less pupils
18 in the total estimate, then that money reverts to the
19 State treasury and cannot be used for any other purpose
20 or any other shortage, or to balance a shortage some-
21 where else?

1 DR. EARHART: That's right.

2 MR. HOFF: Just for curiosity, what would
3 happen if your estimates are low?

4 DR. SENSENBAUGH: This is a problem. We
5 never hit that point.

6 MR. HOFF: I can understand why you wouldn't
7 want to.

8 DR. SENSENBAUGH: This is the thing we fear,
9 that the Governor might do this sometime, in trying to
10 balance what he thinks is balancing his budget and he
11 may cut our estimates down.

12 MR. HOFF: You have no resources that you
13 can fall back on to make up that \$340, for any addi-
14 tional students?

15 DR. SENSENBAUGH: We have no way to do it.
16 So, this is a protection to us and we insist that it
17 stay in there.

18 MR. SMITH: And I don't mean this to sound
19 the way it does, but the fact that the estimates have
20 never been low, does that mean that you do in effect
21 estimate a cushion for safety purposes?

1 DR. SENSENBAUGH: We can't afford to esti-
2 mate a little low.

3 MR. SMITH: So, you have to estimate it a
4 little high?

5 DR. SENSENBAUGH: We have to be on the
6 cautious side. That is why you have a reversion.

7 MR. SMITH: But it still reverts.

8 DR. SENSENBAUGH: But it's the State's
9 money.

10 MR. ENEY: Is there actually a reverse situ-
11 ation? Has there been in the past ten years?

12 DR. SENSENBAUGH: Oh, yes.

13 MR. SARTORIUS: That has been primarily due
14 to assessable bases rather than pupils.

15 MR. HOFF: There hasn't been any year when
16 there hasn't been a sizable reversion.

17 DR. SENSENBAUGH: For a while, yes.

18 DR. EARHART: You have a number of variables
19 involved in this formula. You mentioned one a while
20 ago, Mr. Chairman, in the terms of net ordinary income
21 amount, which is a measure as well in this formula and,

1 of course, the assessable base. An additional variable
2 would be the pupils, the number of pupils. Another
3 variable, of course, can be the number of teachers
4 employed, because the number of teachers employed
5 would affect the formula and the calculation.

6 In addition to that, the level at which the
7 teachers are employed or the professional is employed
8 would be a variable. So, these are some of the im-
9 mediate variables that appear on the scene and, con-
10 sequently, they influence the final determination.
11 During the year when the adjustments are made before
12 the final payment is made, all of these adjustments
13 are calculated and are set by these minimum salaries
14 established by the State and numbers and so on and,
15 of course, then the money that does not go to the
16 counties simply reverts.

17 MR. HOFF: Of the variables, which fluctu-
18 ates the most?

19 DR. SENSENBAUGH: Assessment and income.
20 Besides pupils, assessment and income.

21 MR. CASE: May I interject? It is my

1 understanding that assessable basis and income are not
2 variables any longer because assessable basis is the
3 past year's basis and income is two years past.

4 DR. SENSENBAUGH: That is a factor you know
5 when you make up the budget.

6 MR. CASE: So, those factors are fixed.

7 DR. EARHART: They are fixed, except in
8 relationship to the number of pupils. This makes a
9 difference in the calculation because the measures of
10 wealth times the 1.228 per cent establishes the State's
11 or the local's share. What we have been finding, even
12 in three years, two years of experience and one year of
13 budget, that the State's share has been declining
14 rather substantially. Therefore, this creates a differ-
15 ence, too.

16 We don't always have these figures when we
17 make our calculations. We do not have the firmest
18 figures. This is one of the problems we have been
19 discovering, in terms of getting the base figure which
20 we have just alluded to. These figures should be
21 fixed, but they aren't always.

1 MR. HOFF: Those figures come from the
2 State Department of Assessment and Taxation.

3 DR. EARHART: Yes.

4 MR. CASE: And the Comptroller's office,
5 for income.

6 MR. HOFF: Yes.

7 MR. CASE: May I ask this question? If the
8 Cooper-Hughes Plan had been adopted, am I correct in
9 saying that the so-called Morton formula which you are
10 now working on would no longer have been used, but
11 there would have been substituted for it a provision
12 under the Cooper-Hughes Plan, or would this still have
13 continued?

14 DR. SENSENBAUGH: This would still continue.

15 DR. EARHART: It would still continue.

16 DR. SENSENBAUGH: With some revisions in it.

17 MR. CASE: Any further questions? Dr.
18 Sensenbaugh, I have one further question. You started
19 out by saying we were perhaps lost in a sea of semantics.
20 So, I should like to get back and row in those waters
21 a little bit.

1 The constitutional provision that we are
2 looking at says, and I am quoting again, "and for the
3 public schools," and I repeat, "and for the public
4 schools." Now --

5 DR. SENSENBAUGH: Which reference is that?

6 MR. CASE: Subsection 11, of Section 52,
7 and I am wondering whether or not language couldn't
8 be suggested which would more adequately and properly
9 describe really what is going on here?

10 DR. SENSENBAUGH: You could say and for
11 purposes of State support to local school systems, if
12 this is what it is trying to say.

13 MR. CASE: The words and for the public
14 schools certainly don't really describe, at least in
15 my mind, what the procedure is. It is for the schools,
16 but it is not that vague, really. Actually --

17 DR. SENSENBAUGH: It is for the State Aid
18 Program that goes out to local school systems. This
19 is what we are really talking about. Now, sure, there
20 are other things probably before the schools that --
21 I don't know right offhand what they might be, but --

1 MR. CASE: There are things that could
2 broadly be said, I suppose, that would be for the
3 public schools that are not subject to this prohibi-
4 tion because of various attorney generals' rulings,
5 which we discussed last time; but I would think your
6 salary, for example, which is not a part of this could
7 be interpreted to be "for the public schools."

8 You are certainly speaking for the public
9 schools here this morning and you are being paid for
10 it. So, I'm wondering whether or not --

11 DR. SENSENBAUGH: That angle has never been
12 pulled.

13 MR. CASE: I am wondering whether or not
14 you and these members of your department would have any
15 objection to a rewording of this section, if it could
16 be done, to accurately describe just what is being done
17 now and protect the procedure that we have now?

18 DR. SENSENBAUGH: I believe, in reading
19 over Mr. Raver's statement, his printed statement, I
20 presume there was a lot said in addition to the state-
21 ment here and --

1 MR. CASE: He had quite a bit to say.

2 DR. SENSENBAUGH: But he gave a proposal
3 after the word revision, in one of the suggestions,
4 provided, however, that, and he goes on and spells
5 out what it is, but I don't think that should be
6 spelled out in the Constitution.

7 MR. CASE: I am speaking only as the Chair-
8 man, now, but I quite agree with you. I got lost after
9 the first couple of lines of Mr. Raver's statement,
10 but what I am wondering is --

11 DR. JENKINS: Subsequently, Mr. Raver agreed
12 that that would not be too helpful. I think he blamed
13 that on his attorney rather than himself.

14 MR. CASE: It is always easy to fall back on
15 that excuse, Dr. Jenkins. So, you would think that
16 there would be no objection to a succinct description,
17 if it is possible to make one, which would more proper-
18 ly and adequately describe the procedures we now have?

19 DR. SENSENBAUGH: I think this would be all
20 right, and guilded around the basic aid program that
21 goes out to the school systems, this is the thing we're

1 trying to protect, and give these local school systems
2 some assurance that this is something firm they can
3 count on. Then if the aid changes from year to year,
4 just like this booklet you have, and it might have
5 changed this last section and it could change again.

6 MR. CASE: I think it was pretty well devel-
7 oped at our last hearing that the provision really
8 protects you for one year. That is essentially what
9 it does.

10 DR. SENSENBAUGH: Yes.

11 MR. ENEY: Mr. Case, may I ask a question
12 of you, because I haven't read the entire transcript
13 of the previous hearing and I am not sure what is
14 behind your question, but are you suggesting that this
15 language of the Constitution be limited to something
16 that is essentially the present system of State aid?

17 MR. CASE: You see, Mr. Eney, there are
18 many facets of the State Education Department's budget
19 which does not as a matter of fact come under this,
20 and the people of the State Department are not sug-
21 gesting it should. This has resulted from a long

1 series of attorney generals' opinions which are detailed
2 in the records of the Committee's report, which indicates
3 that the Governor does have complete discretion over
4 certain items.

5 Now, my question is directed to this point,
6 that the language of the Constitution is somewhat am-
7 biguous. It requires attorney generals' rulings. It
8 is still in certain areas unclear, and my thought is
9 that if the Committee wanted to make or had in mind a
10 recommendation which would at least make definitive
11 the present practice, this might be a contribution.
12 It is merely a suggestion.

13 MR. ENEY: This is the thing that was
14 troubling me. When you say present practice, you mean
15 the present practice with respect to State aid?

16 MR. CASE: Yes.

17 MR. ENEY: Limited to that?

18 MR. CASE: Yes.

19 MR. ENEY: Suppose the legislature ten years
20 from now wanted to provide a different system of aid
21 to public schools. Wouldn't you want that covered by

1 the same constitutional protection?

2 MR. CASE: I'm not limiting it to the present
3 system, as a system. What I am talking about is, and
4 I think what Dr. Sensenbaugh and I both are talking
5 about is State aid to public schools, as such, rather
6 than department --

7 MR. ENEY: Whatever may be provided by law
8 from time to time.

9 MR. CASE: That's right.

10 MR. ENEY: Suppose the legislature --

11 MR. CASE: The distinction here is between
12 teaching students and administration, in a broad sense.

13 DR. SENSENBAUGH: Maybe it's financial
14 support as determined by law. Maybe those words would --

15 MR. CASE: I think we're going to have to do
16 a little more looking at this problem. It is just a
17 suggestion. I don't think that what is said here
18 adequately describes what is going on, but maybe it's
19 the best you can come up with.

20 DR. SENSENBAUGH: Well, they did it a long
21 time ago, too.

1 MR. CASE: They did it a long time ago. Any
2 other questions? I would like the record to show that
3 Mrs. Bothe, who is Chairman of the Miscellaneous
4 Provisions Committee, has come in while Dr. Sensenbaugh
5 has been speaking and, Mrs. Bothe, I wonder if you have
6 any questions you would like to ask?

7 MRS. BOTHE: I am sorry I came in in the
8 middle or toward the end of Dr. Sensenbaugh's remarks,
9 because I believe he may know our Committee, the
10 Miscellaneous Provisions Committee, has the educational
11 article, as such, assigned to us and we deferred, as
12 to this Section 52 provision for the inviolacy of the
13 school fund, to the Finance Committee, because we feel
14 it is essentially a finance question; but we did so
15 with the recommendation that the substance of the pro-
16 vision be retained in the Constitution. I don't know
17 that this Committee has yet formulated any specific
18 recommendation for or against it or how.

19 There is one question I would like to ask
20 and that is with regard to the third section of
21 Article 8, the educational article, which refers to

1 the school fund in the State shall be inviolate. Our
2 research indicates that there is no school fund, as
3 such, and that the provision is superfluous.

4 DR. SENSENBAUGH: I notice it uses capital
5 letters, which indicates it must have been something
6 specific back in those days. I would hope that you
7 would retain this, but modify the terminology and
8 possibly say something like school funds or school aid
9 funds established by the State.

10 MRS. BOTHE: Do you think that would be
11 necessary if Section 52, or the equivalent section
12 there, is an actual procedural protection of the funds
13 rather than just a statement of purpose or intent?

14 DR. SENSENBAUGH: I think this has a little
15 different slant. This is a protection that the fund
16 is only going to be used for education, that you can-
17 not transfer it to anything else. This is a little
18 different slant from this other thing we have been
19 talking about, and I would like to see that in there,
20 that funds established by law would be inviolate and
21 dedicated only for the purpose of education. Otherwise,

1 it would revert.

2 I can foresee the possibility of interagency
3 play on funds, which could happen. We have been having
4 a little discussion with the Teachers Retirement Fund
5 and other departments.

6 MRS. BOTHE: Our interpretation of Section 3
7 of Article 8 would be that that provision would not
8 prevent such things happening, that the only real valid
9 actual protection existing is through Section 52 of
10 Article 3, and that this is surplusage that sounds
11 good. We hesitate to take it out because so many
12 educators seem to feel that it is psychologically or
13 sentimentally important, but we wondered if it had any
14 other --

15 DR. SENSENBAUGH: I think, to me, it means
16 keeping it for education, the funds that are set up for
17 education, and not --

18 MR. HOFF: You regard it as a restriction
19 upon the school authorities, then.

20 DR. SENSENBAUGH: Yes.

21 MR. CASE: Any other questions?

1 DR. JENKINS: I'm not quite clear on this
2 point, Dr. Sensenbaugh. Is it your fear that after the
3 appropriation is made, someone, either the Governor,
4 the Budget Bureau or the State Superintendent of
5 Schools, may divert the appropriation to other purposes?

6 DR. SENSENBAUGH: There may be times when
7 funds that should be dedicated to educational purposes --

8 DR. JENKINS: This fund we're talking about,
9 the aid?

10 DR. SENSENBAUGH: It may not necessarily be
11 the aid. It may be something else, some other kind of
12 educational fund that can be established. Any time you
13 get a fund built up and dedicated to education, or I
14 suppose any fund dedicated to any other purpose, and
15 if it is in the bank, it might be a benefit program to
16 certain people, you see, this type of thing, and some-
17 times, if there are funds in the treasury, even though
18 they are dedicated funds, states, government departments
19 have been known to tap those funds.

20 DR. JENKINS: Are there such educational
21 funds now?

1 DR. SENSENBAUGH: I don't know whether you
2 would call the retirement fund for the State teachers
3 one of those or not. This is a sizable sum of money
4 and it is dedicated to the retirement program, and I
5 certainly wouldn't want to feel that anything could
6 ever happen that would permit the tapping of those
7 funds.

8 DR. JENKINS: As you must know, I want to
9 protect the schools, but for the life of me, I can't
10 see the value of this one.

11 MR. CASE: Any other questions, gentlemen?

12 MR. BROOKS: Mr. Chairman, I think it might
13 be well if we could include in this record a statement
14 by Dr. Sensenbaugh on his position on why any portion
15 of educational operations should be kept from the con-
16 trol of the head of the executive branch of government.

17 MR. CASE: Why they should be?

18 MR. BROOKS: That's right.

19 MR. CASE: Well --

20 DR. SENSENBAUGH: Are they?

21 MR. CASE: I don't understand the question.

1 MR. ENEY: What he is thinking of is the
2 recommendation of the executive department, not the
3 recommendation, but the matters being considered by
4 the executive department as to the complete power of
5 the Governor over appointive officers.

6 MR. BROOKS: Not just that, but over-all
7 aspects of the power of the executive branch over
8 appointed administrators.

9 DR. SENSENBAUGH: Yes, I would oppose the
10 chief executive having authority in appointing a State
11 Superintendent, if this is the type of thing you're
12 referring to, which is one element, I guess, of what
13 you are speaking of.

14 MR. CASE: You've got plenty of support for
15 that on the Commission.

16 DR. SENSENBAUGH: Well, it is contrary to
17 what is happening across the country. The movement
18 is towards the type of system Maryland has, where you
19 have Boards of Education and Boards of Education have
20 independence in selecting their superintendent and not

21 MR. CASE: We will have the Governor

1 appointing the President of the University of Maryland
2 and the president of all the State colleges and every-
3 thing else. It would be unthinkable.

4 DR. SENSENBAUGH: I think you would have
5 chaos. I know what happens when you have elected
6 superintendents. I can quote you examples. I don't
7 want them in the record, but it is real serious, what
8 happens to the schools and the same thing is just one
9 step removed from that, when the Governor appoints the
10 heads of the school system.

11 MR. ENEY: But there are some states that
12 have very recently gone to elected superintendents.
13 Do you have any notions as to whether that has proved
14 to be good or bad?

15 DR. SENSENBAUGH: I say it's bad. It may
16 have been an improvement over something that happened,
17 for some reason or other. I know now Oregon had the
18 first election of a superintendent in a long time, but
19 this is because of a State Supreme Court decision in
20 regard to interpretation of their original Constitution
21 saying what was being done all along was illegal. I

1 think it is going to be a matter of time that Oregon
2 is going to change this and correct the Constitution,
3 so it would be possible for them to have the Board of
4 Education select their Superintendent.

5 MR. CASE: Any other questions?

6 MR. ENEY: If we can pursue this same thing,
7 so we don't have to repeat it --

8 MR. CASE: Well, Mr. Eney, would you mind
9 if I interject it here and then you can come back,
10 because some members of our Committee have to leave
11 early and I want to stick on this financial thing until
12 we get through with it and then we will come back to
13 this point. So, if you can just hold that question for
14 a minute.

15 Are there any other questions relating
16 specifically to the provision of subsection 11, of
17 Section 52 of Article 3, from the members of the
18 Committee?

19 DR. JENKINS: Mr. Chairman, I understand
20 you are going to ask Mr. Sartorius to make a brief
21 statement on the historical --

1 MR. CASE: I am going to call on the State
2 Superintendent to in turn call on such people as he
3 would like to have speak.

4 DR. JENKINS: Your knowledge officially
5 extends only back a couple of years?

6 DR. SENSENBAUGH: Just a few years. Of
7 course, you heard Dr. Earhart. I think it would be
8 sad if we brought Mr. Sartorius and he didn't get his
9 name in the record. Mr. Sartorius may want to speak
10 to you as to his experience with relation to the
11 Budget Bureau during the time he was in the State
12 Department.

13 MR. WILLIAM S. SARTORIUS: I might say I
14 was in the State Department working on budgets and
15 estimates and questions and so forth from 1952 to
16 1961, a nine-year period. During that time, I worked
17 with four different budget analysts, Dick Andrews,
18 Henry Boss and Homer Coppen, and there was another one
19 in there who went to Boston. I forgot his name, right
20 off. In other words, what I'm trying to say, there was
21 a turnover and we had to sit down very patiently and

1 go over this, which was our responsibility, and we
2 accepted it. We worked very closely with those budget
3 people. They raised many questions.

4 I might say while I was in the State Depart-
5 ment, these figures are not just something that the
6 State Superintendent or his staff just draws out of
7 a hat. There are very careful studies made. We follow
8 the birth rate, we follow the in-migration as well as
9 the out-migration factors and it's quite a complicated
10 procedure in establishing the independent study that
11 we made in the State Department for the number of
12 pupils Statewise that we thought necessary.

13 Then we broke it down by counties. Then we
14 asked each county to submit its estimates. We would
15 go back and forth. We sometimes felt some of the
16 counties were too high or too low in some cases. Some
17 were inclined to be a little low, some inclined to be
18 a little high. Sometimes they wash out all right, but
19 we have back and forth, and this thing is very care-
20 fully done through the State Department and the local
21 county superintendents and it seems to me that is the

1 place where this should be worked out, rather than
2 through some other agency of county government going
3 into the county school boards' offices and that sort
4 of thing and trying to get backup information on the
5 various elements that go into financial State aid.

6 Now, I might say we had good relations. In
7 the nine years that I had anything to do with the
8 budget at all, we never had any disagreement. We never
9 had any -- sure, some of our budgets were adjusted from
10 time to time. Based on our study, we called the budget
11 people in and we said we have a different estimate.
12 Sometimes they have estimated up and sometimes down
13 and it was down sometimes right up until the time of
14 the legislature. We often made, in a supplemental
15 budget, we'd get the State Board to approve a revision
16 of the estimates for State aid and submit them, and
17 there wasn't any problem.

18 Looking at it from the other angle, as a
19 county superintendent, we would certainly want to see
20 the State Department of Education with all its re-
21 sources and its contacts and its work with the local

1 superintendents and local staffs in the counties be
2 the one that would be responsible and come up with a
3 firm figure that we could count on and not thinking
4 that down in the legislature, that the Governor or
5 budget people could just arbitrarily, and I'm not
6 saying they would, but it could happen, reduce the
7 amount and then the budget goes through, even though
8 the legislature has passed certain laws, they could
9 reduce the budget and in turn that would affect our
10 employment or the number of teachers we would want to
11 have, whether we would want to get experienced teachers
12 or beginning teachers.

13 It could tie our hands if we knew our allot-
14 ment of the total State aid was going to be reduced by
15 somebody who wanted to. We would look to the State
16 Department to fulfill this responsibility.

17 Now, this thing could happen, Mr. Case. We
18 could have a Governor or budget department where maybe
19 they weren't sympathetic to some part of the State aid
20 budget, such as handicapped children. They could say,
21 well, you shouldn't expand that. You shouldn't take

1 care of these handicapped pupils and we will reduce
2 the amount, and the Attorney General said if the money
3 is not appropriated in the budget, the counties cannot
4 get it. It would mean we cannot take care of them,
5 because our budget by that time would have already been
6 submitted to the local county and we couldn't take
7 care of these suburban handicapped pupils, because
8 there is a provision in the State aid that we are
9 not going to get aid.

10 We could have people who are unsympathetic
11 to that and could really circumvent the power of the
12 legislature and the intent of the legislation by not
13 being sympathetic or because they are short of funds
14 and want to balance the budget or something else and
15 just knock off certain amounts. So, I would --

16 MR. CASE: You mean at the level of the
17 Governor's office?

18 MR. SARTORIUS: It could be, possibly, if
19 this provision were not there. They could affect the
20 program in the local counties, that the legislature
21 passed and provided certain aid, by reducing that

1 amount so that we wouldn't know -- and after the budget
2 came out, if our half million dollars for handicapped
3 children aid, for example, were reduced in order to
4 balance the budget or because somebody was unsympathetic
5 to taking care of severely handicapped children or
6 something else, and that were reduced, we could not
7 count in Baltimore County on getting aid for those
8 pupils that we count on, which is only a small part of
9 the total cost of the program, but it is that much
10 contribution.

11 We would have to curtail our program. We
12 would have to, I think, not give broad aid to them. It
13 could happen. There is no question about it.

14 MR. CASE: Am I correct in saying that State
15 aid for the physically and mentally handicapped children
16 is a part of this basic program, such as driver educa-
17 tion, public community colleges and adult education?
18 All of that comes into it?

19 DR. SENSENBAUGH: That is spelled out by law,
20 the aid to handicapped children. That is \$600 per
21 school.

1 MR. CASE: Right.

2 DR. SENSENBAUGH: Now, that is not part of
3 that calculation of the lump sum.

4 MR. WILLIAM PERKINS: It is in another part
5 of the law.

6 DR. SENSENBAUGH: It is basic aid. It is
7 aid.

8 MR. CASE: It is basic aid.

9 DR. SENSENBAUGH: But it is not this formula
10 here, which is the main bulk of it.

11 MR. CASE: These are under other State aids,
12 other than the basic program?

13 DR. SENSENBAUGH: Yes, but they are State
14 aid programs.

15 MR. CASE: And these have been ruled by the
16 Attorney General as being subject to the constitutional
17 provision we talked about this morning; is that right?

18 DR. SENSENBAUGH: I don't know whether the
19 Attorney General's office has ruled on it, but we have
20 been following that practice.

21 MR. CASE: In other words, as far as the

1 Department is concerned, these are items which could
2 not be cut by the Governor?

3 DR. SENSENBAUGH: And the Budget Bureau,
4 assuming this. You have that, the aid to the handi-
5 capped program and it is the --

6 MR. PERKINS: That's right, we haven't cut
7 those programs.

8 MR. CASE: Mr. Smith, any questions? Mr.
9 Hoff? Dr. Jenkins?

10 DR. JENKINS: Are the community colleges
11 under this State aid program, in this sense?

12 DR. SENSENBAUGH: There is a question of
13 what you call public schools. Are they public schools
14 or colleges?

15 DR. JENKINS: This is just either they are
16 or are not.

17 DR. SENSENBAUGH: The budget office hasn't
18 argued on it. We have concluded that aid to community
19 colleges is under the same basis, but this might not
20 be open to your question as to the interpretation of
21 what is a public school.

1 DR. JENKINS: The question I'm going to
2 raise, is this now under the State education? If the
3 community colleges are placed under a separate board,
4 then this would not be a subject of this constitutional
5 limitation.

6 DR. SENSENBAUGH: This brings up an item
7 I did want to make a suggestion to you on, before I
8 got away, on a proposal that your Committee has.

9 MRS. BOTHE: I'd like to hear it.

10 MR. CASE: If you will hold that until we
11 finish this financing problem. Mrs. Bothe, do you have
12 a question as to this financing program?

13 MRS. BOTHE: Yes. A lot of people seem to
14 be asking why the school fund should be separate and
15 apart, compared with, say, welfare. I think you made
16 a convincing argument that it is important to know what
17 is going to be coming in and to have it on touch, but
18 it is also important to other departments.

19 Why should education be singled out, as
20 compared to, say, welfare?

21 DR. SENSENBAUGH: I think education has a

1 different relationship to life than what welfare has.
2 You are dealing with the development of the mind and
3 the fact that our destiny is going to be determined in
4 a great measure by the strength of our brain power
5 collectively, I am speaking of, now, and I am delighted
6 that the Federal Government has finally begun to put
7 money where they used to talk about education and
8 beginning to recognize that maybe education is going
9 to help them solve some of the problems of the world,
10 and I think it is one of these areas that is just a
11 little too important to all of us to get involved into
12 cross currents of politics.

13 MRS. BOTHE: In other words, it is more
14 important than these other areas?

15 DR. SENSENBAUGH: I guess that is what I am
16 saying.

17 MR. CASE: That is what Mr. Raver said, in
18 just those words.

19 MR. SARTORIUS: One other point. We also
20 have the compulsory attendance law, and the whole setup.
21 So, we have to take care of these people. They have to

1 be taken care of. Now, your welfare program changes
2 from time to time, but this is, I think, fundamentally
3 that we have to take care of these people.

4 MR. CASE: Any other questions? All right,
5 Mr. Perkins, have you got anything to add to this
6 discussion?

7 MR. PERKINS: Only one thing, and at the
8 last meeting I was asked if I ever cut the budget and
9 I said yes, or certainly, as to what the record will
10 show, but I also made the statement that all of our
11 cuts were made with the concurrence of the State
12 Department of Education.

13 Now, we talked with each other, and it was
14 explained here that I have worked there three years,
15 and last year Dr. Earhart and I agreed that we would
16 cut the estimate by 2500 students. So, when I made the
17 statement, I did say we did cut the budget, but I also
18 said, and it was not in the record, and I don't know
19 why, but I said it was with the concurrence of the
20 State Department of Education.

21 We wouldn't do it arbitrarily, because it

1 has been clarified here that these are only estimates.
2 They are not sacred. They do go through a great deal
3 of analysis by the State Health Department who has
4 statisticians who check on birth rates and --

5 MR. CASE: Mr. Perkins, what kind of post
6 audit procedures are employed to check the reversions,
7 to see whether or not they are correct amounts?

8 MR. PERKINS: The Auditor's Department
9 checks all State agencies.

10 MR. CASE: The State Auditor?

11 MR. PERKINS: Yes, sir, the State Auditor
12 does, not the Budget Bureau. This new law was sup-
13 posedly designed to correct this large reversion every
14 year, but ever --

15 MR. CASE: You mean the Morton formula?

16 MR. PERKINS: Yes, sir, the Morton formula,
17 but even here, in the last two years, we still have had
18 these large reversions. Of course, in the end, the
19 Budget Bureau likes to have them to help balance the
20 budget for the next year, but we would also, if we
21 could come up with reliable estimates, we don't want

1 to have these large reversions; but with all of the
2 variables in the formula, it is difficult not to come
3 up with a reversion of some kind.

4 MR. CASE: Is there any chance that these
5 reversions can be used for anything else other than the
6 State aid programs?

7 MR. PERKINS: Not to my knowledge. I've been
8 there three years, as I say, and we use the reversions
9 to balance the budget for the surplus for the next year.

10 MR. CASE: And, believe me, I'm not even
11 indicating that this has ever happened and certainly I
12 know wouldn't under Dr. Sensenbaugh's regime, but
13 suppose a superintendent of schools wanted to employ
14 somebody on his staff, and there wasn't any money in
15 the budget for this. Could he dip into the reversions
16 and bind that money in that way?

17 DR. SENSENBAUGH: Not unless he is covered
18 by the formula.

19 DR. EARTHART: All of the calculations are
20 made within the range of the formula.

21 MR. CASE: Yes, but they've got so many

1 dollars in the bank that are not going to be spent,
2 that are going to go back.

3 MR. PERKINS: They don't only use the aid
4 money. They have other money in their budget. Plus,
5 if they really need the money, they can go to the
6 emergency fund, if they have to have the money.

7 MR. CASE: I'm not talking about what they
8 could do under those circumstances. I'm trying to
9 point up whether or not there is a pool of funds which
10 can be used for purposes other than what the legisla-
11 ture appropriated them for.

12 DR. SENSENBAUGH: No. The final check that
13 they can get is after the figures have all been refined
14 in terms of the staff they have employed, and our office
15 checks them as to certification, as to where they stand
16 on the salary schedule and all this, teacher by teacher.

17 MR. CASE: I take it, then, the money is not
18 appropriated out of the treasury to the State Department
19 until after the fact; is that correct? In other words,
20 you don't get the money and then turn it back.

21 DR. SENSENBAUGH: That's right.

1 MR. CASE: It just never leaves the treasury.

2 DR. SENSENBAUGH: That's right. They make
3 payments during the year and the final payment has to
4 be the accurate payment.

5 MR. HOFF: How many times a year are funds
6 turned over to the State Department?

7 DR. EARHART: Six times. The money isn't
8 turned over. We simply prepare letters of transmittal
9 to the Comptroller's office and the Comptroller's office
10 makes the payments.

11 MR. CASE: Directly to the counties?

12 DR. EARHART: That's right. It goes to the
13 School Board, not to the county government, but to the
14 School Board.

15 MR. CASE: Does anybody on the Committee have
16 any other questions?

17 MR. ENEY: I would like to follow your last
18 question. Could a budget amendment accomplish what you
19 talked about?

20 MR. CASE: Mr. Perkins, Mr. Eney asked
21 whether or not, assuming that you know that there is

1 going to be a very large reversion, the number of
2 pupils has been estimated too high, so that there is
3 going to be a very substantial sum; is it possible to
4 amend the budget in such a way to use that money for
5 any other purpose?

6 MR. PERKINS: I imagine you could, sure, if
7 it was approved by the Governor or the Attorney General,
8 if he had to rule on it, but it would not be done until
9 almost at the end of the fiscal year, where all the
10 counties have been paid and it could not be -- and it
11 would have to be in excess of the money that Mr. Rennie
12 uses as a reversion figure which we get -- when we do
13 get that figure, we try to make a preliminary one
14 around March or April, and then the final, and it would
15 have to be after that. So, there probably wouldn't be
16 much in there, anyway, but it could happen, yes; but, it
17 would be after all of the commitments have been made
18 and the money had been properly spent.

19 MR. CASE: Does anyone else have any further
20 questions on this particular section?

21 DR. EARHART: Mr. Chairman, is the Committee

1 perfectly clear about the \$340, in terms of the amount
2 that the State supports of that figure? It isn't a
3 matter of --

4 MR. CASE: We've got the formula and we've
5 got your book and I guess I can explain it as good as
6 Dr. Sensenbaugh did at the last meeting. That is going
7 to satisfy me.

8 DR. EARTHART: It is essentially, the State
9 supports essentially 40 per cent of the 340. So long
10 as that is fixed.

11 DR. SENSENBAUGH: That is not uniform, you
12 know that. It depends upon the wealth of the local --

13 MR. CASE: I don't know how the 1.228 figure
14 ever came out of the ground, but that is not part of
15 this Committee's inquiry.

16 DR. SENSENBAUGH: I think it was to balance
17 the formula.

18 MR. CASE: I would like to know how that
19 figure was struck some day.

20 MR. ENEY: I would like to follow that same
21 thing, to see if this sentence about the sacred nature

1 of the school fund could have any further application
2 here. Conceivably it would be possible by a budget
3 amendment to transfer a surplus in the State aid fund
4 to a purpose other than education, would it not,
5 assuming you got the necessary approvals?

6 MR. PERKINS: No, sir.

7 MR. ENEY: What would prevent it?

8 MR. CASE: Wouldn't the provision in the
9 Constitution that requires it be inviolate prevent it?

10 MR. ENEY: Yes.

11 MR. PERKINS: As long as I've been there,
12 we haven't transferred money from one department to
13 another. It's in the budget law, that we can't do
14 that. We just can't do it.

15 MR. CASE: Do we have any other questions
16 on this particular --

17 MRS. BOTHE: I just wanted to clarify some-
18 thing. I believe it was said that you couldn't revert
19 these funds to other purposes because they were in-
20 violate school funds, and I am wondering if you are
21 referring to Section 52 or to Article 8, Section 3,

1 when you say that; that is, whether the inviolacy
2 of Section 3 is construed as being the appropriations
3 that are made for the schools?

4 MR. CASE: That would have nothing to do
5 with transferring funds and they are appropriated, Mrs.
6 Bothe, as I read it. Section 52, and particularly
7 subsection 11, which we deal with this morning, only
8 has to do with the Governor's right to change the bud-
9 get as it is submitted.

10 Now, I would think that while Mr. Perkins,
11 in answer to the other part of the question, while Mr.
12 Perkins is absolutely right, you cannot take University
13 of Maryland funds, for example, and put it over into
14 the State Law Department, you cannot take State Law
15 Department appropriations and put it up in Health.
16 The reason for this is a statutory provision in the
17 budget law which requires funds to be channelized.

18 However, the legislature, if they wanted to,
19 could change that and could say, in effect, that moneys
20 appropriated to the Attorney General could be used for
21 the Health Department; moneys appropriated to the

1 University of Maryland could go to Welfare and so on.
2 Now, I submit that this is not possible with respect
3 to education funds because the Constitution says that
4 the fund shall be inviolate, and I do not see how the
5 legislature could pass a law which would say that this
6 reverter could be spun around into other areas of the
7 State government.

8 Is this the way you understand it, Dr.
9 Sensenbaugh?

10 DR. SENSENBAUGH: Yes, sir, exactly.

11 MRS. BOTHE: And that derives from Section 3
12 of Article 8?

13 MR. CASE: From Section 3 of Article 8.

14 MRS. BOTHE: Because our Committee --

15 MR. CASE: The one you wanted to repeal.

16 MRS. BOTHE: Our Committee, after some
17 research, has been under the impression that the school
18 fund referred to there is nonexistent, except for some
19 escheats and nominal amounts that are considered to be
20 the school fund.

21 Apparently, in a number of states there is

1 such a thing as a school fund derived from special
2 taxation or from endowments of various sorts, and our
3 investigation indicates that Maryland has none of any
4 consequence and that this Section 3 is referring to
5 some anachronism.

6 We recommended that it be eliminated for
7 that reason and not because we wanted to see the
8 appropriations for use of the schools violated and --

9 MR. BROOKS: Mr. Chairman, I believe Mr.
10 Perkins has said on prior occasions that under the
11 Maryland system there are no funds, educational or
12 otherwise, and this provision would not protect any
13 funds because there is only a general fund and, even
14 though amounts are appropriated to agencies, this act
15 of the legislature creates no funds in the State but
16 the current system and therefore --

17 MR. CASE: It may not create any fund, as
18 such, but I think you would have a pretty good shot
19 at a test case in saying that the legislature could not
20 pass a law to switch reversions from school appropria-
21 tions into other departments of State government, so

1 long as this constitutional provision is in the law.

2 MR. BROOKS: I believe we found the practice
3 on March 10, 1966, before the Miscellaneous Provisions
4 Committee, Pages 113 to 114, could be to the contrary
5 with regard to the inviolability, in that, as inter-
6 preted previously, this Section 3 of Article 8,
7 inviolability of school funds, means that once the
8 money goes into the fund it has to be expended for the
9 purposes appropriated. On the other hand, we found
10 that --

11 MR. CASE: Who said that?

12 MR. BROOKS: This is Mr. Sartorius, and on
13 a prior occasion we reported conversations with Mr.
14 Perkins to our research staff.

15 MR. CASE: Well, that doesn't persuade me.

16 MR. BROOKS: We have evidence that the funds
17 revert back to the general fund of the State.

18 MR. CASE: Well, they do not revert back.
19 They never leave the general fund; that's the point.

20 MR. BROOKS: Well, let me quote then --

21 MR. CASE: Well, Mr. Brooks, I don't care

1 who you quote. That is a fact. There's no use getting
2 into quoting pages and things from the record because --

3 MRS. BOTHE: I must say that our Committee
4 has received an entirely different view, sometimes from
5 the same people, as to what this Section 3 means and
6 we made a recommendation based on what we thought it
7 means. Now, we figured maybe something different and --

8 MR. CASE: Well, they are the experts,
9 Elsbeth. All you have to do is ask them.

10 MRS. BOTHE: I would like to know.

11 MR. BROOKS: Dr. Zimmerman said, and I quote:
12 "It reverts. That is what I was talking about. It
13 goes back," to the general fund, and I think this
14 ought to be reflected in the record.

15 MR. PERKINS: The money is appropriated.
16 It may not go to the treasury, but it is earmarked to
17 an account number in the State Department of Education.
18 When we say revert, then that money comes out of that
19 account and goes into another account.

20 MR. CASE: But it has never left the treasurer.

21 MR. PERKINS: That's right.

1 MRS. BOTHE: But the question is whether it
2 can be used for purposes other than education?

3 MR. PERKINS: The reversions have been used
4 to balance the ensuing budget. It has been used for
5 other purposes, but only after we know all of our commit-
6 ments have been made, bills have been paid.

7 MR. CASE: That's next year's budget.

8 MRS. BOTHE: But, getting back to Section 3
9 of Article 8, the words school fund there being in-
10 violate couldn't mean that moneys appropriated but
11 unused for education may not be diverted to some other
12 use.

13 MR. PERKINS: But Dr. Sensenbaugh recom-
14 mended that you revise that language. I said there is
15 no school fund, as such, and there isn't. Now, I
16 didn't argue that we didn't need a provision in there,
17 but I say that as such there is no school fund.

18 Now, if you want to revise that language to
19 nail it down to some school aid, why that is another
20 matter.

21 MR. ENEY: Mr. Perkins, let me put the

1 question a little differently and see if this is it.
2 Is it not true that the Budget Bureau has never re-
3 garded the budget appropriations for educational pur-
4 poses as a school fund within the meaning of Section 3
5 of Article 8?

6 MR. PERKINS: That is what I just said. I
7 don't think it is a school fund.

8 MR. ENEY: And they are diverted to other
9 purposes, whenever you use the diversion for another
10 purpose?

11 MR. PERKINS: Right.

12 MR. CASE: But only in the next budget, Mr.
13 Eney.

14 MR. ENEY: Yes, that's true, but it is not
15 an inviolate school fund.

16 MR. CASE: Then it goes back into the
17 general fund and it is no longer a school fund.

18 MR. ENEY: That is just the point. It
19 doesn't remain inviolate as a school fund.

20 MR. CASE: Of course, it couldn't remain
21 that way forever, but the point of it is that during

1 the budget year the legislature could pass an act --
2 let me start over. The legislature could pass an act
3 that during the budget year reversions or amounts that
4 might revert could be switched to other departments.
5 Now, this could happen for all departments. It could
6 happen for the Attorney General. It could happen for
7 the Health Department. It could happen for Welfare.

8 So that there could be a complete inter-
9 change between departments of moneys that were con-
10 sidered toward the end of the year not to be funds that
11 are going to be used. Now, the question is even if the
12 legislature passed such an act, could it apply to moneys
13 appropriated in the current budget for education, in
14 view of Section 3 of Article 8? That is the issue.

15 MR. ENEY: But the point is that if you
16 answer that no, you would do it on the basis that the
17 school fund, as used in Section 3 of Article 8, meant
18 the money appropriated in the budget for school pur-
19 poses.

20 MR. CASE: That's right.

21 MR. ENEY: If it meant that, then you

1 couldn't use it for anything other than education in
2 the next year or any other year, because the consti-
3 tutional provision is not limited to one year, you see.

4 MR. CASE: But you could always make a
5 bookkeeping entry, because they always need more. So,
6 it goes back and keeps revolving in the educational
7 system. There is no problem with that.

8 MR. ENEY: I don't think so, because if you
9 go on the premise that school funds, as used here, and
10 this I thought was a very plausible argument, meant
11 the appropriated funds, then you necessarily would have
12 to have the Budget Bureau every year pick up the re-
13 versions and include them in as income for the school
14 fund in the next year.

15 MR. CASE: They could do it.

16 MR. ENEY: They have never done it.

17 MR. CASE: They may not have done it. They
18 haven't done a lot of things, but they have done it in --

19 MR. ENEY: Whether they are right or wrong
20 is something else, but, in fact, they have never re-
21 garded Section 3 as being applicable, as a matter of

1 fact.

2 MR. CASE: They never asked for a ruling
3 because they never had to.

4 MR. ENEY: That may be, but the fact is they
5 never considered it as such, whatever effect it might
6 have.

7 MR. CASE: That doesn't have too much effect
8 to me because what these gentlemen are saying is that
9 they think there ought -- don't let me put words in
10 your mouth, but Dr. Sensenbaugh, let me ask you this.
11 Do you think the Constitution ought to contain a pro-
12 vision which would prevent the legislature from switch-
13 ing funds out of the education and into other areas,
14 assuming a reversion was going to take place?

15 DR. SENSENBAUGH: I'm not so sure it wouldn't
16 be a good protection for all departments, that you
17 couldn't have this interplay, because I could conceive
18 that somebody wants to build up an area somewhere and
19 they go in and they tap other departments in order to
20 make --

21 MR. HOFF: There's a lot of room for

1 hanky-panky.

2 MR. CASE: Yes. So, leaving out this busi-
3 ness of school fund, as such, which I think the nuts
4 and bolts of it is whether or not there ought to be a
5 provision absolutely prohibiting the legislature from
6 using reversions or money which looks like they are
7 going to be reversions for other purposes. Would you
8 say this is what --

9 DR. SENSENBAUGH: I would like to think we
10 have this money to go through the year, it's there,
11 and no one is tapping it until we are finished with it.

12 MR. ENEY: How about subsequent years?

13 DR. SENSENBAUGH: We make the budget up the
14 following year. Each year stands on its own.

15 MR. ENEY: No, but I think Mr. Case's ques-
16 tion went further than that. Would you favor a pro-
17 vision in the Constitution which said that once money
18 was appropriated for school purposes, any reversions of
19 that money because of it not being spent has to be con-
20 tinued to be picked up for school purposes in subsequent
21 years and never revert to the general fund?

1 MR. SMITH: Then you just reduce the amount
2 of the budget for the next year.

3 DR. SENSENBAUGH: I think that is just an
4 academic question and makes a nice discussion, but I
5 don't think it is at all practical.

6 MR. ENEY: I don't think it is an academic
7 question, Dr. Sensenbaugh, because your State laws may
8 provide for specific appropriations on the formula in
9 the next year. So, it merely wouldn't be a bookkeeping
10 or academic proposition.

11 MR. HOFF: It is a question of whether
12 school funds means anything.

13 MR. ENEY: Or, more broadly than that,
14 whether there should be a provision saying that school
15 funds, meaning any money appropriated for school pur-
16 poses, should never revert to the general fund, if they
17 are unspendable. That is the question --

18 MR. CASE: My question was specifically
19 limited to the budget year for which they were appro-
20 priated.

21 MR. ENEY: All right, but we're talking now --

1 MR. CASE: I have no doubt that at the end
2 of the budget year or the end of the fiscal year every-
3 thing ought to go back in the general fund. My worry
4 is during the year should the Board of Public Works or
5 this so-called strong executive we're going to have,
6 or what not, have the power to switch those funds around,
7 even assuming that there is no question but that there
8 is going to be a healthy reversion in the State Depart-
9 ment of Education budget. Should, before the end of the
10 fiscal year, this so-called chief executive, strong
11 chief executive, have the right to say, all right,
12 boys, you're going to have three million dollars more
13 than you are going to need and Forests and Parks want
14 to buy a big piece of timberland up in Carroll County
15 from some public officials up there. So, we're going
16 to take that money and buy that land. Now, that is my
17 point.

18 DR. SENSENBAUGH: It can be done in a special
19 session of the legislature. It wouldn't have to be done
20 in the regular session.

21 MR. CASE: I'm talking about after the fiscal

1 year.

2 MRS. BOTHE: Mr. Case, I am confused because
3 I was under the impression Mr. Eney asked earlier
4 wouldn't it be possible to get rid of these reversions
5 and divert them during the year, and Mr. Perkins said
6 it would be, except it would come so late, it wouldn't
7 be practical.

8 MR. PERKINS: I didn't say that. He asked
9 me a direct question and --

10 MR. CASE: Nobody said that.

11 MRS. BOTHE: Is it theoretically possible,
12 if impractical, to take what is thought or known to be
13 a reversion and divert it during the budget year?

14 MR. CASE: No. That is the whole burden of
15 this discussion. It cannot be used for any other pur-
16 pose.

17 MR. ENEY: But only because the statute pre-
18 vents that kind of a budget amendment.

19 MR. CASE: Right.

20 MR. ENEY: But there is no constitutional
21 prohibition.

1 MR. CASE: It is statutory, insofar as all
2 other departments are concerned, and what I'm trying to
3 develop is, as far as the Department of Education's
4 budget, the switching cannot take place and never can
5 take place so long as it is written this way. I don't
6 know that I'm right about this, but --

7 MRS. BOTHE: Our interpretation, after some
8 investigation, was that the school fund did not mean
9 that at all. The words school fund did not refer to
10 the appropriations made annually by the legislature.
11 We'd like to know if we are wrong, because we don't
12 want to mislead the convention in making a recommenda-
13 tion.

14 MR. CASE: It has been indicated here this
15 morning by the State Superintendent and his people
16 that you are wrong.

17 MR. ENEY: No, no, quite the contrary is
18 what he said.

19 MR. HAILE: This might clarify it. Prior to
20 the turn of the century, there were two tax rates and
21 the proceeds of one tax rate went in a separate fund

1 which was called the school fund. That is reflected
2 in our statutory provisions, but under modern budgets,
3 there is a general fund for which appropriations are
4 made and there are not two tax rates and there is not
5 a general fund and a school fund working in conjunction.
6 They are still all one general fund.

7 So, the use of the words school fund is now
8 an anachronism.

9 MRS. BOTHE: That was our statement.

10 MR. PERKINS: That was my statement, and if
11 you want to retain this, it has to be revised.

12 DR. SENSENBAUGH: I think the intent is
13 good.

14 MRS. FREEDLANDER: Mr. Chairman, if you say
15 all other departments are protected by statute, then
16 why couldn't the school be protected? If you can't
17 take reversions and play hanky-panky with them for all
18 departments, why --

19 MR. CASE: That is the question, Mrs.
20 Freedlander. I don't know. Maybe they ought to take --
21 as Mrs. Bothe's committee suggested, scrap this whole

1 idea of school funds and take it out of the Constitu-
2 tion and leave it to the legislature.

3 MRS. BOTHE: We have not so suggested, Mr.
4 Case. We suggested that the way it is now written
5 under education --

6 MR. CASE: Didn't you suggest that that come
7 out entirely, the school fund?

8 MRS. BOTHE: Because of its being an anachro-
9 nism, and we deferred to your Committee because we
10 thought it was a finance rather than a philosophical
11 question, the retention of the sense of Section 52.

12 MR. CASE: 52 hasn't got anything to do with
13 what we're talking about.

14 MRS. BOTHE: Yes, it does, because we felt
15 that the appropriations for school use should be in-
16 violate, but that Section 3 of Article 8 didn't serve
17 that purpose. Section 52 of Article 3 does, as we
18 construe it, and we recommend that the intent be per-
19 petuated under the Finance Committee.

20 MR. CASE: Very well. Does anyone else have
21 anything to ask?

1 MR. BROOKS: I have a question, if we are
2 through with the particular discussion of finance, I
3 would like to return to the prior discussion which you
4 postponed, Mr. Chairman. Would you like Mrs. Bothe to
5 take the chair for that discussion?

6 MR. CASE: She can do that if she wants,
7 because I've got to go.

8 MRS. BOTHE: If we could take advantage of
9 the presence of these gentlemen to hold a meeting of
10 the Miscellaneous Provisions --

11 MRS. FREEDLANDER: We have pending --

12 MR. HOFF: We have a question on the election
13 of State superintendents.

14 MR. BROOKS: And related superintendents.

15 MRS. BOTHE: It would be a good opportunity
16 for us to meet with them on those subjects and, if the
17 Finance Committee would like to stay, we would like to
18 have them.

19 MR. CASE: Well, I am overdue downtown right
20 now. It is up to these gentlemen. I am through with
21 them, so to speak. Thank you very much, gentlemen.

1 MR. BROOKS: I would like to return to the
2 question and put it in a little different context by
3 giving this thought background, that actually the
4 structure of government in a modern society is more
5 regulated, the heart of it is more likely found in the
6 budgetary process than elsewhere in the Constitution,
7 and a few comments were made concerning the fact the
8 Federal Government is taking more interest in educa-
9 tion.

10 Under the Federal system, however, it is
11 interesting to note that education is altogether part
12 of the executive function and is regulated by the
13 Executive Department of the government. Under the
14 present Maryland Constitution, the significant aspects
15 of the budgetary provisions would indicate that educa-
16 tion is somewhat separated from the control of the
17 executive branch which would really raise the question
18 as to whether or not it should be recommended that
19 education be established as a fourth branch of govern-
20 ment, and that is really the crucial issue, probably,
21 at the heart of the matter, whether or not education

1 should be treated as are all other departments of the
2 government under the executive branch.

3 Some of the other Committee members or Mr.
4 Eney may want to elaborate on that, but I think this
5 is really basically the heart of the matter, and that
6 is where the distinction is found in the Constitution
7 and that is where the power lies. I think we would
8 want some comments on the philosophy of whether or not
9 it is desirable to have in Maryland an independent
10 educational system from the executive branch.

11 MR. ENEY: I am very anxious to have your
12 comments on this, Dr. Sensenbaugh, in the record, not
13 merely for the information of this Committee and of the
14 Commission, because ultimately it is going to be pre-
15 sented to the Constitutional Convention. So, it is a
16 very important matter.

17 DR. SENSENBAUGH: Well, let me begin first
18 by saying when you take the Federal Government and the
19 relationship of education at a national level, to me,
20 I think this has some problems.

21 You just look at the chief, the head, the

1 Commissioner of Education and the number of people that
2 have filled that position in rapid succession, and, if
3 that is a recommendation for it, I think it is a thing
4 we want to avoid. We would hope that we could hold the
5 Commissioner of Education long enough at the State and
6 national level, that we could have some consistency in
7 programs, and this is the fear I have when you talk
8 about an appointed superintendent at the State level;
9 that you will have considerably more turnover in top
10 management.

11 MR. HOFF: If Mr. Kennedy can make a mistake,
12 any superintendent can.

13 DR. SENSENBAUGH: And it didn't take long
14 for him to make a mistake and some people feel it was
15 not a mistake. Nevertheless, it was the beginning of
16 his downfall, as far as I can see. I don't know how
17 long Commissioner Howe will be in that office. That
18 remains to be seen, too. It is a tremendous operation.
19 It has many problems, many complex problems and so does
20 the State office.

21 Maryland has been quite fortunate in that

1 since 1900, I am the fourth person who occupies the
2 State Superintendency. Now, there may be something
3 said about having too long a tenure, this is possible,
4 but I assure you, I won't be in office as long as my
5 predecessor or the past two, because time gives out on
6 me and mandatory retirement age catches up. So, this
7 will not happen.

8 I think, in these states where you have a
9 turnover of the superintendency, you also have a turn-
10 over of the central staff which is really very detri-
11 mental. I visited a state department of education just
12 as recently as this spring. I spent three days with it
13 as a reviewing team and I shuttered to think what is
14 going to happen after the next election. I know what
15 happened after the last election and, for me, I would
16 not work in a situation like that.

17 MRS. BOTHE: On the subject of the super-
18 intendent of schools and the manner of his selection,
19 of course, our Constitution is silent on that subject
20 altogether and we have heard some sentiment expressed
21 that there should be a constitutional provision

1 covering the School Board and the Superintendent of
2 Schools, and we at least tentatively rejected the sug-
3 gestion on the Miscellaneous Provisions Committee on
4 the basis that things have been going so very well and,
5 as you say, have been over such a substantial period
6 and it was unnecessary and perhaps even dangerous to
7 change the course of events by changing or adding to
8 the Constitution on the subject, and I wonder what
9 your thoughts are on that?

10 DR. SENSENBAUGH: I noticed that -- this is
11 true, this was discussed and one who was entered in
12 your recommendations was the University of Maryland.
13 I wondered, though, why, being a member of the Board
14 of Trustees of the State colleges, which is going to
15 be quite a sizable group, why this was not entered,
16 although you did indicate that there were so many
17 different colleges; but these colleges did not have
18 separate boards. Maybe it would be wrong to spell out
19 in the Constitution that there would be a single board
20 continually operating the State colleges in Maryland,
21 because it might possibly be some day you may want to

1 break the institutions down and give each one its own
2 board.

3 I don't know whether this is a possibility
4 or not, but once you have a constitutional provision,
5 it's hard to change and we know that there has been a
6 University of Maryland for a number of years and we
7 know that a change in this is going to be somewhat
8 remote, and I have no objection about the University
9 of Maryland --

10 MRS. BOTHE: I was wondering about the
11 secondary school systems.

12 DR. SENSENBAUGH: I know some of the educa-
13 tors have proposed that this ought to have some con-
14 stitutional backing. I have no real strong feeling on
15 this. Your experience in Maryland has been good,
16 particularly since 1916, around that period, and the
17 system has a good set of laws and, really, we are
18 recognized across the country as having a very sub-
19 stantial legal structure here in Maryland for the
20 operation of our schools.

21 There is a tendency to move in our direction.

1 Twenty years ago there were only eight superintendents
2 in the nation who were appointed by boards of education.
3 Today there are twenty-three of them. They have moved
4 that far along, that twenty-three states have seen fit
5 to organize the way we are, with the board of education
6 either appointed or elected and they in turn select a
7 superintendent, and this gives a lot more security, a
8 lot more stability, and I favor this.

9 Now, the other step would be to maybe even
10 move further ahead and set up the fourth branch that
11 some of you are referring to, operating on its own as
12 an independent agency. If this were done, certainly
13 you would have to have, I would think you would have
14 to have an elected board of education because, somehow,
15 you have to get back to the people. The people have
16 to have all of the control. As it is now, the Governor
17 is elected and the Governor appoints our board members,
18 but I think if you are going to set up a fourth branch,
19 you certainly would want to have the board members
20 elected possibly by the public and they in turn would
21 select their superintendent and operate the school

1 system with their staff.

2 Now, I don't know whether this is leading
3 toward anything you had in mind or what?

4 MR. BROOKS: Yes. I think it is practicable
5 to discuss whether or not society has developed in the
6 last hundred years to the point where it might in fact
7 be desirable, because of the significance of education,
8 to recognize it as a full fourth department of the
9 government and not have the aspects of what in reality
10 it might be in recognition of this in various other
11 articles, without ever really recognizing that that
12 is what has in fact been accomplished through other
13 provisions, and maybe education is that significant
14 and all of education should be combined in a separate
15 department.

16 If we have so advanced, then I think it
17 might be worthwhile to have the views of yourself and
18 others on whether or not the time is ripe for the con-
19 sideration of this and whether it is in fact desirable.

20 DR. SENSENBAUGH: Locally, there are some
21 systems that do this. They are completely independent.

1 They elect their boards. They have the taxing authority.
2 They levy their own taxes for the support of their
3 schools. I don't know of any state that does this, at
4 the state level.

5 MR. ENEY: Well, this was quite common some
6 years back, was it not?

7 DR. SENSENBAUGH: Yes, and it is still quite
8 prevalent in some areas. I think there is a tendency
9 to have elected board members in the smaller school
10 districts, where people know each other more so than
11 they do over a large area.

12 If you look at your big cities, and I have
13 a feeling, now, this is just an impression, that most
14 of the big cities do not elect their board members;
15 although, this is not true in Boston. I know Boston
16 does elect their board members.

17 MR. ENEY: Dr. Sensenbaugh, I would like to
18 ask you this, and it comes back to what you were saying
19 before, but I would like to get a little more specific,
20 by statute, now, not by the Constitution.

21 The Governor appoints the members of the

1 School Boards, both the local and the State, and they
2 select --

3 DR. SENSENBAUGH: Except Montgomery. That
4 is the only elected group.

5 MR. ENEY: And they select the State Super-
6 intendent or the County Superintendent, as the case may
7 be, and the statute is so arranged that I have heard
8 the expression sometimes that before he is appointed
9 the Board is the boss of the Superintendent and, after
10 he is appointed, the Superintendent is boss of the
11 Board because of the interplay between the statutes.

12 Now, I gather that you would strongly oppose
13 reversing this and having the Governor appoint and
14 remove the Superintendent and have the Board as merely
15 advisory, but I do not understand your statement to
16 give the specific reasons why you think that such a
17 change would be undesirable. You say you think it is
18 undesirable, that you have more stability and so forth,
19 but what specifically do you fear if the Governor were
20 to have the power to appoint the Superintendent? Is
21 it political interference that you would be concerned

1 about?

2 DR. SENSENBAUGH: Yes, there would be a
3 great deal of it. I think the quality of the Governor
4 would very definitely influence the kind of an educa-
5 tional system you would have. I could think of
6 governors that would be very concerned about education
7 and --

8 MR. ENEY: What specifically do you think
9 the Governor would seek to do or to prevent the Super-
10 intendent from doing, if the Superintendent served
11 under his direction?

12 DR. SENSENBAUGH: Well, I haven't been in
13 such a situation and my impression would be that you
14 could get to the point of being influenced in the
15 appointments of personnel.

16 MR. ENEY: Teachers?

17 DR. SENSENBAUGH: Yes.

18 MR. BROOKS: Principals of schools?

19 DR. SENSENBAUGH: Principals of schools.

20 MRS. FREEDLANDER: Except that the State
21 Department hasn't anything to do with that. That is

1 done on the local level. Principals are appointed on
2 the local level. The State Superintendent has nothing
3 to do with the principals in the twenty-four subdivi-
4 sions.

5 MR. HOFF: This can shift down.

6 DR. SENSENBAUGH: Principals do move about
7 from one system to another and you have a staff of
8 supervisors at the central office and we have quite a
9 sizable group of them and --

10 MR. ENEY: Are they merit system employees?

11 DR. SENSENBAUGH: No, they are not merit
12 system employees, but they are subject to approval --
13 the Superintendent recommends them and they receive
14 approval from the Board of Education.

15 MR. BOTHE: Of course, if there is no
16 thought of putting any of this in the Constitution, it
17 is outside of our purview and concern.

18 MR. ENEY: I was going to lead to the next
19 question, and that was, do you feel strongly enough
20 about it or concerned enough about it to change the
21 present lack of provision in the Constitution, or do

1 you think there ought to be one?

2 DR. SENSENBAUGH: I think it would be a pro-
3 tection, if it were in there, but my strength of feeling
4 is not quite as strong as what I read concerning what
5 Dr. Pullen indicated and some others, but it would be
6 a protection.

7 MR. ENEY: Has there been any indication in
8 the years you have been associated with the school
9 system that if there was any possibility of legislation
10 changing the system, so far as the appointment of the
11 Board is concerned, and the Superintendent, that --

12 DR. SENSENBAUGH: There was at one point,
13 several years ago. I'm not clear on the details. I
14 think there was some legislation to change the appoint-
15 ment of the Superintendent of Schools, the State
16 Superintendent. It didn't get very far, but it was --
17 I remember, I was Superintendent, I think it was in
18 Frederick County. It must be in the past ten years.
19 There was this type of legislation introduced, but it
20 never cleared the committees. What the purpose of it
21 was, I don't know. Of course, there are all kinds of

1 legislation introduced.

2 MR. ENEY: Have there been, not in just the
3 time you have been State Superintendent, but in all
4 your years with the public school system, have there
5 been any times when there is a conflict between the
6 Governor and the State Board or the State Superinten-
7 dent?

8 DR. SENSENBAUGH: Oh, yes.

9 MR. ENEY: Over what?

10 DR. SENSENBAUGH: A lot of it never gets in
11 the open, and there are just differences in points of
12 view concerning certain things.

13 MR. ENEY: Concerning educational qualities
14 or personnel or what?

15 DR. SENSENBAUGH: I guess it could be both.
16 Not necessarily personnel. I don't think it would be
17 personnel. Now, you asked me for specifics, and I
18 cannot give you specifics and I would have to check
19 into this a little more, but I know there have been
20 differences of opinion.

21 MR. ENEY: I don't want to put words in your

1 mouth, but I wonder why you don't say this. Doesn't
2 the present system give the Board of Education and the
3 County Superintendent a status to go direct to the
4 legislature that they might not have if the Super-
5 intendent were appointed by the Governor?

6 DR. SENSENBAUGH: This could be true, yes.

7 MR. ENEY: Has it been --

8 DR. SENSENBAUGH: Of course, we haven't had
9 a superintendent who has been appointed by the Governor.
10 So, we have never had any control, but I know I would
11 feel free talking about pending legislation that the
12 Governor was favoring, if I were not appointed by him.

13 MR. ENEY: What I'm getting at, have there
14 been any conflicts between the Governor and the
15 Superintendent as a result of which the Board or
16 Superintendent went directly to the legislature to get
17 an educational program through or tried to?

18 DR. SENSENBAUGH: A lot of it, in salaries,
19 salaries of teachers. I think most of the salary gains
20 that teachers have gotten in recent have been as a
21 result of educator efforts rather than executive efforts.

1 MRS. FREEDLANDER: Dr. Sensenbaugh, I would
2 like to extend Mr. Eney's question and perhaps not make
3 it in the form of a question, but a statement. I have
4 been observing the schools in Maryland for about twenty
5 years and I am very much interested in public education.
6 I think what happens under the present system, because
7 you are not really beholden to the Governor, is you can
8 play both parties and you can lobby the legislature and
9 bring the people to the legislature and get your action
10 there, because when you mobilize, you mobilize towards
11 the legislature and not towards the Governor, because
12 you feel more secure; and if you were appointed by the
13 Governor, you would feel that you owe allegiance and
14 loyalty to him and that you might be subject to your
15 being asked for your resignation.

16 DR. SENSENBAUGH: That's right. This again
17 would refer to the individual who was in the Governor's
18 chair at the time.

19 MRS. FREEDLANDER: I don't think so. I think
20 it could be anybody. It could be somebody who is pro
21 education and it could be a neutral person. I think

1 you feel more secure this way.

2 DR. SENSENBAUGH: Once you are one of his
3 staff members, you owe a support to him, although you
4 would certainly want to feel free to point out changes,
5 if you think they were wholesome and good and I think a
6 Governor would want that.

7 MRS. FREEDLANDER: Yes, but that is not
8 usually the path you take. I am talking about your
9 staff doesn't take that path usually. Your staff goes
10 to the legislature. For instance, if Mr. Sartorius
11 were here, he would go to the Baltimore delegation of
12 the legislature, and this is what he does when --

13 DR. SENSENBAUGH: If he wants local legis-
14 lation for his schools.

15 MRS. FREEDLANDER: Even if he wants it for
16 the State Board, he goes to the Baltimore delegation.
17 I mean, that is the procedure as I have watched it.

18 DR. SENSENBAUGH: I think you are quite
19 right.

20 MRS. BOTHE: I wonder if we could go back
21 briefly to Section 52 of Article 3, as to the real

1 necessity for having the budget nonamendable by the
2 executive. I wondered what would happen if there were
3 no such provision, as far as you can reasonably predict.

4 MRS. FREEDLANDER: What we were discussing
5 with Mr. Case, the section --

6 MRS. BOTHE: What we discussed with Dr.
7 Sensenbaugh, about the inviolability. This is about
8 the ability of the executive and the legislature to
9 amend the school budget.

10 DR. SENSENBAUGH: All right. What is the
11 question, again?

12 MRS. BOTHE: What would you expect to be
13 the consequences if that were removed from the Con-
14 stitution and the protection it affords?

15 DR. SENSENBAUGH: I still go back and say a
16 lot of people like Mr. Donaho was pointing out, and
17 this is the exact statement he gave and this is the
18 fear that I have, that there are a lot of people who
19 would say the same things. Now, I have here somewhere
20 his statement and this is what he said:

21 "The mandatory item for schools should be

1 eliminated. Other functions may sometimes be more
2 important."

3 Now, he is disregarding all statutory pro-
4 visions there and thinks that you should have a flex-
5 able budget, that you live from year to year and, to
6 me, this is a thing you cannot stand, if you are going
7 to have a solid system of education.

8 MRS. BOTHE: You are actually only getting
9 one year's protection.

10 DR. SENSENBAUGH: It is written in the law,
11 spelled out for one year in advance and --

12 MR. ENEY: But, it is in the law, not in
13 the Constitution.

14 MRS. BOTHE: It is in the Constitution, in
15 effect.

16 MR. ENEY: I mean your protection year to
17 year is included in the law.

18 DR. SENSENBAUGH: But you know this is not
19 going to be pulled out from under you while the legis-
20 lature is in session.

21 MRS. BOTHE: I gather, in 1916, when this

1 was put in the Constitution, there must have been
2 considerable hanky-panky going on.

3 DR. SENSENBAUGH: Yes, and this brought it
4 in.

5 MRS. BOTHE: But, in trying to find out
6 exactly what was going on then, the best I have been
7 able to find are a lot of biographies of Dr. --

8 MRS. FREEDLANDER: Goodenauer.

9 MRS. BOTHE: -- Dr. Goodenauer who appar-
10 ently made some contributions in Maryland, but other
11 than his biographies and what a wonderful person he
12 was, I cannot seem to trace down exactly what was going
13 on at that time or might have happened since, had these
14 amendments not been placed in the Constitution. Does
15 anyone here know?

16 DR. SENSENBAUGH: The report was based on --
17 well, in 1916, there were a lot of shenanigans going on.

18 MRS. FREEDLANDER: May I direct a question
19 to either Dr. Sensenbaugh or Mr. Perkins and Dr. Earhart?
20 Statistics indicate that Maryland is getting increasing
21 funds from Federal grants. I know I have some figures

1 here on how much Baltimore City gets. We also know
2 Federal grants depend on the stability of the State
3 Department. Nowhere in your testimony have you men-
4 tioned the fact that we receive Federal funds to the
5 extent which your Department represents a link, a
6 Statewide stable link with the school systems.

7 DR. SENSENBAUGH: Over-all, we are receiving
8 about 12 per cent -- for the operation of schools, 12
9 per cent comes from the Federal Government.

10 MRS. FREEDLANDER: But the Federal Govern-
11 ment allocates it to Maryland because your Department
12 is what it is. You have not stated that.

13 DR. SENSENBAUGH: This is one of our prob-
14 lems which is now confronting many states. One reason
15 why the Federal Government in some cases is trying to
16 bypass the State Department is because they are afraid
17 of the strength the State Departments have to imple-
18 ment the programs.

19 MRS. FREEDLANDER: And you receive it
20 because of the kind of department Maryland has developed
21 and it is stable.

1 DR. SENSENBAUGH: If all the fifty states
2 had the strong central system of education, the central
3 control that Maryland has, I don't think there would
4 be any of this argument about bypassing state govern-
5 ments; but, really, some of the state departments
6 across the country are rather pathetic.

7 MRS. FREEDLANDER: I just mentioned that
8 because I wondered whether any of you wanted to talk
9 about that, because I read it. Did you want to speak
10 on that?

11 DR. EARHART: No. I can only concur with
12 what he said.

13 DR. SENSENBAUGH: There are some very strong
14 departments of education. New York State is one of
15 the strongest and there are quite a few, maybe twenty
16 of them, in fairly good shape, possibly more. Half of
17 them, let's say, but then some of them are weak and I
18 am sure if I sat over in Washington and was thinking
19 about parsoning out the money to be administered
20 locally through the state departments of education,
21 you would want to put some pretty stringent controls

1 on it and this is just what has happened.

2 MR. ENEY: May I go back to Mrs. Bothe's
3 question and maybe ask Dr. Earhart to answer the ques-
4 tion. This goes back a little bit in the background
5 that we have been dealing with. Talking still about
6 this provision in subparagraph 11, Section 52, that
7 the estimates for the public schools as provided by
8 law shall be transmitted to the Governor and not be
9 changed; isn't the net effect of this provision merely
10 to leave it to the legislature rather than to the
11 Governor, the determination of what moneys shall be
12 appropriated for schools initially?

13 DR. EARHART: Well, the budget that we
14 present to the Budget Bureau which, in effect, becomes
15 the Governor's budget is presented to the legislature
16 and then, of course, is subject to the action --

17 MR. ENEY: That is not my question. With
18 respect to the other departments, the Governor exer-
19 cises his judgment, not thinking of the legislative or
20 the judiciary, and he initiates the budget and says
21 that this department or that department shall have this

1 amount or that amount, and the next session can cut it
2 down; but it is the Governor's budget. He is the one
3 that starts it all. The legislature does not.

4 Now, with respect to the school budget,
5 isn't the net effect of this provision not that the
6 State Department of Education has control over the
7 budget, but that the legislature determines it?

8 DR. EARHART: Yes.

9 MR. ENEY: So that what the Governor cannot
10 initiate, the legislature does initiate?

11 DR. EARHART: Yes.

12 MR. ENEY: So, the net effect of eliminating
13 this provision, as I understand it, from Paragraph 11,
14 as Mrs. Bothe indicated, would be merely to remove
15 control of the initiation of budgetary provisions from
16 the legislature and put it in the hands of the Governor.
17 Is that it?

18 MRS. BOTHE: That's right.

19 MR. ENEY: The net effect of 11 is just
20 that.

21 MRS. BOTHE: Mr. Eney, the reason I brought

1 in Section 6 is because I don't think you can consider
2 them separately; but not only is the Governor tied, but
3 so is the General Assembly, which is not true in the
4 case of other areas of the Governor's budget.

5 MR. ENEY: This all goes back, in both 6
6 and 11, to the laws passed by the legislature. So, the
7 legislature passes the laws providing for State aid
8 and, if they want to make the amount \$200 instead of
9 \$340, they can do it. They can change the law and
10 say the amount of State aid is \$200 per person. So,
11 it is the legislature which is determining how much is
12 going to be appropriated. It sets up the formula,
13 and this is true under 6 and 11, whereas, in other
14 departments, it is the Governor who initiates it.

15 MRS. BOTHE: And it cannot be changed for
16 the current fiscal year. They get the double pro-
17 tection for the following year.

18 MR. ENEY: I'm not sure you can say that
19 because the protection is by statute and not by the
20 Constitution, assuming that Section 3 of Article 8
21 does not protect the school fund. Its protection comes

1 again from the legislature. This is the only point
2 I'm making, that it is the legislature and this ties
3 in with the question I was directing to Dr. Sensenbaugh
4 on the over-all thing. Isn't this the real reason or
5 one of the real reasons why you feel that the State
6 Superintendent ought to be answerable to the Board and
7 not to the Governor, that it is a part of this whole
8 philosophy that education, the system of education,
9 the money for education is not an executive but a
10 legislative function? Isn't that the real reason?

11 DR. SENSENBAUGH: It ties up more closely
12 with the people than with a single head of the govern-
13 ment.

14 MR. BROOKS: This is why I would ask, if
15 that is the case, if we are not to the point where we
16 want to consider a fourth branch, because the legis-
17 lature is not in a position to administer this function,
18 if it be a legislative function, and therefore there
19 has got to be some more direct line of responsibility
20 recognized, with a full time administration, if it is
21 not to be the Governor who has full administrative

1 responsibility for all other governmental programs.

2 DR. SENSENBAUGH: Maybe there is one reason
3 it shouldn't be an entirely separate branch. If it is
4 a separate branch, I would assume it would have its
5 own taxing authority?

6 MR. BROOKS: Not necessarily. It would be
7 more judicial than any other branch and it wouldn't
8 necessarily entail the Superintendent being elected
9 by the people, just as the judges aren't. The Super-
10 intendent could be selected in a number of ways, and
11 so could other personnel.

12 DR. SENSENBAUGH: The reason I say if they
13 have complete taxing power, I think there has to be
14 some over-all tying together of all taxes, so things
15 are somewhat kept in balance.

16 MR. BROOKS: They could still have provisions
17 similar to the budgetary section, so far as independence
18 of education from the executive and to some degree
19 legislative interference and that the legislature can-
20 not just change whatever this formula is and have it
21 applied to this year's budget. So, you still have this

1 independence, just as this same section includes the
2 independence of both the legislative and judicial
3 branches combined. In other words, that is the key to
4 the independence of both the judiciary and the legis-
5 lative branch. It is that very sentence that includes
6 the educational provision and gives it what should be
7 otherwise and what is in fact, I believe, independence
8 from the executive branch and all the other branches.
9 It sets it up in that clause more powerfully than any-
10 thing else you can write in the Constitution, and that
11 is why I am wondering if it is practicable, if not
12 desirable, to continue that and recognize it formally
13 in the Constitution under your educational article.

14 MRS. FREEDLANDER: How would that be phrased,
15 John?

16 MR. BROOKS: I think you could go further
17 and develop a whole educational article for your
18 Department of Education. This would bring in your
19 higher education, as well, whatever kind of board of
20 higher education you would have and so forth. The
21 whole educational system in regard to its independence,

1 insofar as it should be protected constitutionally as
2 against other detailed statutory material, would be
3 found in the Constitution. In other words, this would
4 mean a more elaborate educational article than that
5 being considered at the present time.

6 MR. PERKINS: What would that give you that
7 you don't have now? What is the advantage of this?

8 MRS. BOTHE: Theoretically, you could take
9 the executive department out and in simply a couple of
10 sentences, you still would have no practical change in
11 the way the State is being run.

12 MR. PERKINS: The Governor is responsible
13 for all of actions of his departments, and in education
14 today, State and Federal, if they keep it up there, we
15 would have a --

16 MR. BROOKS: What this would give us would
17 be autonomy for all the educational systems as against
18 the autonomy provision now being given solely to the
19 university. There would be a form of autonomy similar
20 to that involved in the autonomy act in the statutory
21 law for the university, relevant to all aspects of

1 education built in such an independent article.

2 MR. PERKINS: I would be opposed to that.
3 Autonomy, even at the university, I am opposed to.
4 Curly Byrd and I were opposed to it and he is the one
5 who fought the hardest for it, but he said it's the
6 worst mistake he ever made. Nobody should have autonomy.

7 MR. BROOKS: You would want to take into
8 consideration your checks and balances, insofar as
9 what this fourth department of the government has as
10 against the other three, and it would seem to me then
11 a logical project to consider what checks and balances
12 are required for the protection of the people as a
13 whole.

14 MRS. BOTHE: Doctor, does any state recog-
15 nize education as a fourth branch of the government?

16 MR. BROOKS: Not that I know of.

17 MRS. BOTHE: By constitution?

18 DR. SENSENBAUGH: I suppose there are. In
19 fact, the more I hear Mr. Brooks talk, I suppose we
20 are operating that way. New York State is.

21 MR. BROOKS: Several states come close to

1 operating that way.

2 DR. SENSENBAUGH: They just don't say so.

3 MR. BROOKS: That's right, and I am suggesting
4 whether this is a practical discussion rather than to
5 keep discussing it from the standpoint of let's have it,
6 but don't recognize it, and let's go ahead and recog-
7 nize it.

8 MRS. BOTHE: This is the first time the
9 subject has been raised, as such, education being
10 written in the Constitution as a fourth branch, but in
11 the discussions we have had, I think most of the
12 educators have felt there ought to be some compromise
13 between being a fourth branch and just being another
14 branch of the State government.

15 This provision in Section 52 is something
16 less than what they were speaking of, but something more
17 than what the other departments in the State enjoy. You
18 are asking whether people here would want to go still
19 further.

20 MR. BROOKS: That's right, which really
21 speaks to the point, also, as part of the justification

1 for the need of an educational article in the Consti-
2 tution at all.

3 MRS. BOTHE: There has been sentiment ex-
4 pressed going the other way, to take out the special
5 privileges accorded the education department and take
6 out the education article.

7 MR. BROOKS: And when you are talking about
8 the fundamental law of the State, you are interested
9 in the basic structure and the question is, is education
10 a part of that basic structure as against the other
11 departments under the major division of the State
12 government or is it not, and at the moment we have
13 still left it, so to speak, in this hybrid position,
14 that it is a little more important than anything else,
15 but not up to the level of a provision of the State
16 government.

17 MR. HOFF: If you make it a separate part
18 of our State government, it would mean the election
19 of school officials.

20 MRS. BOTHE: No.

21 MR. BROOKS: Not necessarily.

1 MR. HOFF: Why not?

2 MR. BROOKS: It could be handled like the
3 judiciary.

4 MR. HOFF: They are elected.

5 MR. ENEY: Yes, but they don't have to be.

6 MRS. BOTHE: And we are proposing that they
7 not be, in the political sense.

8 MR. ENEY: May I break in to say the record
9 is getting more of a debate from the Committee, but we
10 are not getting many answers from the guests.

11 DR. SENSENBAUGH: The more I hear Mr. Brooks
12 talk about it, it is almost what we are doing now and
13 if it simplifies the writing of the Constitution, I
14 would have no objection to writing it in as a fourth
15 area of the government, executive, judicial, legisla-
16 tive and education, because, in effect, we are just
17 about almost as independent as we can be, other than
18 the fact that we do not raise our own taxes.

19 MRS. BOTHE: I would like to hear from Mr.
20 Perkins who expressed himself so vehemently on the
21 subject.

1 MR. PERKINS: I'm utterly opposed to anybody
2 having autonomy. I think the Governor or President or
3 any chief executive should be the responsible person
4 and, in education, I've seen it in other places where
5 they have had their way and the rest of the county
6 government has had to compete with education all the
7 time because education has been the favorite of the
8 community. They have gotten the biggest part of the
9 tax dollar, and Roads and everything else had to suffer
10 for it, and it is wrong. Nobody should have autonomy.

11 MRS. BOTHE: You simply don't believe
12 education is that important, as compared to other --

13 MR. PERKINS: It is important, but so are
14 roads, so are all your other problems, water, sewer.
15 There are other problems that should have their right-
16 ful place in the budget.

17 MRS. BOTHE: You spoke specifically about
18 the University of Maryland, the effect of the statutory
19 autonomy act. Why do you feel that it has been bad?

20 MR. PERKINS: Well, we have problems with
21 the University. Now, all the other colleges, because

1 they cannot do what the University does, they want
2 autonomy and the University has policies that we don't
3 have in the State. They have higher salary scales and
4 so forth, and it is hard to compete with them.

5 DR. SENSENBAUGH: Of course, there, I would
6 like to make a statement. That stimulates me, Bill, to
7 say something, too.

8 MR. PERKINS: We have a --

9 DR. SENSENBAUGH: We should have more
10 autonomy on that line.

11 MR. PERKINS: I can't argue this, but here
12 again, the responsibility definitely points to the
13 Governor and it should. He is elected and he is at
14 fault, whether it is Tawes or Sickles or whoever it
15 is. The responsibility can be laid right in his lap;
16 but you don't have to have an autonomy -- where do you
17 lay the fault at the University when something is
18 wrong? It's hard to pinpoint responsibility there.

19 MRS. BOTHE: Well, Dr. Elkins, when he
20 spoke to our Committee, kept emphasizing the fact that
21 the legislature does have the ultimate control in the

1 appropriations they may use to pay higher salaries,
2 which are nevertheless appropriations which the legis-
3 lature can give or withhold. So that the autonomy was
4 not independent of the legislature, to some extent, as
5 the executive.

6 MR. PERKINS: But there is \$40,000,000 in
7 the budget of the University that we don't even see.

8 MRS. BOTHE: That being --

9 MR. PERKINS: They are restricted and dedi-
10 cated funds, but plus the fact that in the amounts they
11 do receive, there are certain things we have no control
12 over, the Governor or the Budget Bureau.

13 MRS. BOTHE: You are speaking now of what
14 areas of income?

15 MR. PERKINS: There are all kinds, research
16 grants, endowment funds and other areas.

17 MRS. BOTHE: Are these from sources other
18 than taxpayers?

19 MR. PERKINS: Yes.

20 MR. ENEY: Tuition doesn't go into the
21 budget.

1 MR. PERKINS: No.

2 MRS. BOTHE: Mr. Perkins, would you propose
3 endowments or research grants from private people be
4 subject to the budget --

5 MR. PERKINS: All have been used to go
6 beyond salary scales we have provided, and this is
7 the problem with research grants. Because of the
8 grant they can go beyond the State salary structure,
9 which causes problems in the other schools.

10 MR. ENEY: It includes tuitions, too, you
11 see. That doesn't go through the Budget Bureau at all.

12 MR. PERKINS: Here is one example. We just
13 through the legislature created a division, put it in
14 the Budget Bureau, of data processing control for the
15 whole State of Maryland. Immediately, the University
16 says that they are exempt because they have funds.
17 Anyhow, we were asked to come to the meeting at the
18 University and they have hundreds of thousands of
19 dollars worth of computers over there.

20 So, our man is just as knowledgeable about
21 computers as the University people are. So, we get

1 into a hassle over there. They want a computer that
2 we feel they don't need. So, the first thing they do
3 is run to the Attorney General to get an opinion to
4 see if they are exempt from our control, and we can
5 prove that we are right, but yet because they have
6 autonomy, they want to do what they think is right.

7 Now, this law either applies to the whole
8 State of Maryland or the University is exempt, and if
9 the rest of the agencies are under control, why
10 exclude the University? What makes them so much an
11 exception that they have to be excluded all the time?

12 MRS. BOTHE: We've been given a lot of
13 reasons for that.

14 MR. PERKINS: They haven't convinced me yet.

15 MR. BROOKS: Let's go to the judiciary for
16 just a minute, and I gather you would say that even
17 though we found that the practice is not exactly in
18 accord with the constitutional provision in the case of
19 budgeting for the judiciary, would you say they have
20 budgetary autonomy, financial autonomy?

21 MR. PERKINS: I don't know. I don't know how

1 it works.

2 MR. ENEY: You mean in practice?

3 MR. PERKINS: I'm in education and I don't
4 have anything to do with the judiciary.

5 MRS. BOTHE: You say that the President of
6 the University at the time the autonomy act went into
7 effect no longer thinks well of it?

8 MR. PERKINS: I heard the statement made that
9 Curley Byrd, and he's the one that got the autonomy
10 for the University, as I understand it, said it was a
11 mistake. Maybe it's because he was out, I don't know,
12 but he said it was a mistake that they got it. Maybe
13 it's a reflection. Maybe, after reflection, he changed
14 his mind.

15 MRS. BOTHE: He figured he did better than
16 going to the legislature for a gymnasium. Does anyone
17 else have any questions?

18 DR. SENSENBAUGH: There is one comment I
19 wanted to make. You have, on Page 8, in the Committee
20 report, reference to children of school age. Now, the
21 statutory provisions change from time to time. We are

1 up to sixteen as compulsory attendance. They are
2 talking now about eighteen, and I just wondered whether
3 we couldn't dress up that language a little bit and
4 not call them children.

5 MRS. BOTHE: You are speaking now of our
6 proposed Section 1?

7 DR. SENSENBAUGH: Yes.

8 MR. ENEY: Persons, instead of children?

9 DR. SENSENBAUGH: Because a young man eighteen,
10 who is subject to the draft, may not want to be referred
11 to as a child.

12 MRS. BOTHE: We thought of that and one of
13 the reasons we left it that way was because Section 1
14 does deal with the elementary school system and deals
15 with minors, and some state constitutions give specific
16 aid, say up to the age of eighteen, and we didn't want
17 to do that in the expectation that perhaps the com-
18 pulsory age would be upgraded and someday we expect
19 there will be a kindergarten throughout the State.
20 Have you any suggestions?

21 DR. SENSENBAUGH: I think that Mr. Eney had

1 the better term, persons or youth, because we will, I
2 suppose, soon have an eighteen-year-old compulsory
3 attendance age.

4 MRS. BOTHE: It is rather light not to call
5 them persons.

6 MR. ENEY: That's rather cold.

7 MRS. BOTHE: Not very young and sweet.

8 DR. SENSENBAUGH: It is just semantics, and
9 I thought -- it struck me when I read it. If there
10 are no other questions from our part, I want to express
11 our appreciation for allowing us to be here. If there
12 is any information you want us to run down, like some
13 of this general impression, maybe I can document it,
14 Mr. Eney, some of the specifics you asked me and caught
15 me cold.

16 MR. ENEY: If you have any ideas, it would
17 be very helpful if you would write to the Executive
18 Director and, I suppose, to Mrs. Bothe and the Executive
19 Director, but it is one of the very important things
20 being considered and we would like to have your views.

21 DR. SENSENBAUGH: I can see that during a

1 political campaign,^a/Governor running for reelection
2 could make it embarrassing for the State Superintendent
3 if he were an appointed officer, and also the members
4 of his staff.

5 MR. BROOKS: We appreciate your coming on
6 such very short notice. Thank you.

7 (Hearing concluded.)

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1 CONSTITUTIONAL CONVENTION COMMISSION

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3 Meeting of the Committee on State Finance

4 and Taxation held on Monday, August 15, 1966, at 2

5 o'clock p.m., at the University of Maryland, School of

6 Law, Baltimore, Maryland.

7

8

9 PRESENT:

10 Richard W. Case, Esquire, Chairman

11 Stanford Hoff, Esquire

12 Stephen H. Sachs, Reporter

13

14 ALSO PRESENT:

15 John C. Brooks, Executive Director

16

17

18

19

20 Reported by:

21 W. P. Banister

1 THE CHAIRMAN: Gentlemen, if we can come
2 to order, please. This is a hearing by the Committee on
3 State Finance and Taxation of the Maryland Constitutional
4 Convention Commission.

5 We are here today to discuss Article 3,
6 Section 36 of the Maryland Constitution, which provides
7 as follows: No lottery grant shall ever hereafter be
8 authorized by the General Assembly.

9 This particular provision of the Constitution
10 found its way into our basic law in the Constitution of
11 1851 and has remained in its present form unchanged through
12 the successive drafts of 1864 and 1867. The anti-lottery
13 provision has a rather interesting history but we are
14 not going to take our time this afternoon to go into all
15 of it. Suffice it to say that one time in this state
16 the lottery was rather well known and often used method
17 of raising revenue. It was taken out of the law in 1851
18 because it was felt that there were various problems that
19 were caused by the existence of a lottery which the state
20 would be better served not to have to face.

21 The issue here today is whether or not this

1 Committee should recommend and the Maryland Constitutional
2 Convention Commission should ultimately recommend to the
3 Convention a document which would not contain the
4 prohibition against a state lottery.

5 We have requested a number of interested
6 persons to appear here today for the purpose of giving
7 us their views. I would think that the orderly way of
8 proceeding would be to have those who favor the exclu-
9 sion of the provision to speak first and then those who
10 favor the retention of the provision to speak next with
11 rebuttal periods if anybody cares to have any of that
12 type thing at the end.

13 So I should ask now for a show of hands of
14 those people who favor the exclusion or the repeal, if
15 you will, of Section 36 of Article 3. I know Mr. Pressman
16 is here to speak against the provision. Are there any
17 other people here who care to speak in this area?

18 (There was no response.)

19 Mr. Pressman, I am delighted to have you
20 here. It is always a pleasure to see you. Mr. Hoff and
21 I are the members of the Committee present, but as you

1 know, there are so many committee hearings being conducted
2 by this Commission that oftentimes hearings are held in
3 this nature, a transcript is made and the rest of our
4 Committee members will read and study whatever you have
5 to say. Don't feel bad because the others are not here.
6 Some are in Europe, some are taking vacations. Mr.
7 Hoff and I like yourself apparently are not able to
8 get away this summer. So here we are. We will be
9 delighted to hear you.

10 STATEMENT OF HYMAN A. PRESSMAN

11 MR. PRESSMAN: Mr. Case, Mr. Hoff, Mr. Sachs,
12 I appreciate sincerely the opportunity of being able to
13 come here to express my views. This is the real demo-
14 cratic way to proceed. I am very grateful to you for
15 inviting me.

16 In considering the provision in the Consti-
17 tution, it seems a simple enough statement as it is,
18 but unfortunately there hasn't been complete agreement
19 in what it means. No lottery grant shall ever hereafter
20 be authorized by the General Assembly.

21 There has not been agreement on whether this

1 provision in our State Constitution prohibits the
2 operation of a state-operated lottery such as I propose.
3 There have been comments made by people who opposed
4 my views and by the press as well editorially to the
5 effect that any contention to the effect that this
6 provision does not exclude a state-operated lottery is
7 out of the question, that it is not even debatable. It
8 is so clear that nobody should make such a contention
9 as I make.

10 I would like to point out that no less
11 eminent and authority than his Honor Judge Wilson K.
12 Barnes, now a member of the Court of Appeals of Maryland,
13 made such a contention very forcefully and very well
14 documented in a brief that he filed and also in a counter-
15 brief he filed in the case of the Citizens Committee of
16 Anne Arundel County versus the County Commissioners of
17 Anne Arundel County and Southern Maryland Development
18 Company, Inc., in the Circuit Court for Anne Arundel
19 County.

20 I am not going to read at length from his
21 brief but I would like to quote a part in which Judge

1 Barnes said: "In the Constitutions of 1851 and 1864 and
2 1867 the prohibition is only upon the authorization by
3 the General Assembly of lottery grants" -- underlining
4 the words lottery grants -- "there is no constitutional
5 prohibition against traffic, or dealing in lottery
6 tickets or distribution of money by chance. This latter
7 prohibition is effected in part in Maryland by statute.
8 See Article 27, Section 356 of the Maryland Code."

9 Mr. Barnes at that time quoted from the
10 case of Phalen and Norris versus State and Felgill and
11 Johnson 18 in which the Court of Appeals held that
12 lottery grants in favor of Washington and St. Johns
13 Colleges by the Act of 1816 were exhausted when the
14 schemes were drawn even though all tickets were not sold
15 at that time. In the opinion Judge Dorsey refers to the
16 authorizations under the Act as "Lottery grants."

17 Mr. Barnes, at that time Mr. Barnes, now Judge Barnes,
18 said "There would seem to be no doubt of the meaning of
19 the phrase 'lottery grant' as used in the Constitutions
20 of 1851, 1864 and 1867."

21 He said "The Constitution does not prohibit

1 lotteries but the authorization of lottery grants by
2 the General Assembly."

3 Then in a reply brief Mr. Barnes at that
4 time also said "The abandonment of the amendment of
5 the Constitution of 1851 which had been proposed and
6 restriction of the prohibition to lottery grants in both
7 the Constitution of 1964 and 1867." As a result of that
8 he said "There seems to be no doubt that the meaning of
9 lottery grant in Article 3, Section 36 of the Constitu-
10 tion of 1867 prohibited the General Assembly from
11 authorizing lottery grants as they theretofore had been
12 authorized, and this prohibition did not extend to gambling
13 devices, ~~ffarow~~ tables, or even lottery schemes and
14 tickets not authorized as a grant by the General Assembly
15 itself."

16 Looking back at the history of the lottery,
17 we find that the Legislature would give authority for
18 holding lotteries by grant. This became more and more
19 prevalent to the point where it became abused. It would
20 get so ridiculous that a man would want to open up a
21 cigar store, and in order to be able to have stock to

1 begin his enterprise he would get a lottery grant from
2 the Legislature to hold a lottery so he could get stock
3 for his cigar store. It had just gotten out of hand.
4 There was a great deal of skulduggery involved and it
5 came into disrepute.

6 As a result of that, the Legislature, of
7 course, placed into the Constitution the prohibition
8 which we have now. So that the word grant is in there
9 for a purpose. It isn't just a word thrown in without
10 any purpose or without any meaning. The Legislature
11 could at that time have said there shall be no lotteries.
12 There would be no need to put in grant unless they meant
13 something by the word grant. The purpose was to prohibit
14 a lottery grant, not a lottery. It is my contention and
15 it is the contention of some others -- although it is
16 contradicted by a great many others -- that this
17 provision in the Constitution only prohibits the
18 Legislature from making a lottery grant but it does not
19 state that there shall be no lotteries in the State of
20 Maryland.

21 I think this is important to keep in mind

1 when deciding whether or not to include this in the
2 Constitution. In deciding whether to include it in the
3 new Constitution, it seems to me that we have to keep
4 in mind that we want a well organized Constitution. We
5 intend to have great improvement over the organization
6 of the Constitution itself as well as the provisions.
7 We don't want any obvious inconsistencies which have
8 grown up over the years since some of these provisions
9 in the Constitution were first inserted into the
10 Constitution.

11 I say it is very inconsistent for the
12 Constitution to say that you can't have a lottery grant
13 and not at the same time to say you can't have pari-
14 mutuel betting at the race tracks, because if the
15 importance of this provision is such that it ought to
16 be in the Constitution, then certainly there ought to be
17 some consistency. If it is important that gambling of
18 this type be outlawed, then there ought to be some
19 consistency and there ought to be other types of
20 gambling outlawed in the Constitution. Other provisions,
21 perhaps bookmaking or provisions, yes, of pari-

1 mutuel betting at the race tracks. I have never yet
2 received a satisfactory answer to my contention that
3 it is inconsistent for anyone to say that it is not
4 proper to have a lottery and at the same time say that
5 it is perfectly proper, perfectly moral, to have a pari-
6 mutuel betting at the race tracks.

7 At the race tracks the state is even a
8 partner in this enterprise. Mr. Miles has proposed that
9 the state take over this enterprise. I think he has
10 a very good idea. I am very much in agreement with him.
11 I think that the state ought to take it over just as it
12 has been done in the State of New York.

13 But I do think that Mr. Miles and others
14 are inconsistent when they are in favor of the operation
15 of pari-mutuel betting, whether it be run privately in
16 partnership with the state or by the state itself, and
17 at the same time contend that it is immoral to have a
18 lottery. I might say that many people are misinformed
19 about the morality of the lottery. They are misinformed
20 by the stand of some churches on the lottery. I happen
21 to have seen some articles in some Catholic magazines that

1 show that the Catholic church does not regard this as
2 being immoral.

3 Very recently in an issue of the American
4 Magazine, Jesuit magazine of very wide circulation through-
5 out the country, it had an editorial saying "There is
6 no principle of Christian morality that condemns wagering
7 of any kind as per se immoral. Then in another magazine,
8 Sign Magazine, the National Catholic Magazine, there
9 was a statement made in an editorial in which it was
10 also said as follows: "Catholic theologians teach that
11 under certain conditions gambling is not immoral.

12 As for a national lottery, they teach that it is not
13 immoral if honesty is observed in conducting it, if there
14 is a reasonable proportion between the amount contributed
15 and the prize and if there are effective restrictions
16 to prevent people from unduly squandering their money.

17 It is possible that the gambling urge of Americans would
18 be satisfied if the individual could go to a government-
19 operated office and place a bet or to the post office
20 and buy a lottery ticket. In that case the gangsters
21 and racketeers would find themselves without their major

1 source of income which would be diverted to the Govern-
2 ment in place of taxes and to various good causes."
3 This was signed by Father Ralph Gorman, Editor of Sign
4 Magazine.

5 THE CHAIRMAN: What was the publication
6 that appeared in?

7 MR. PRESSMAN: This was in Sign Magazine,
8 S-i-g-n, Sign Magazine. This is a National Catholic
9 Magazine and Father Ralph Gorman had a full page editorial
10 entitled the Editor's Page, To Bet Or Not To Bet. I
11 have quoted the concluding paragraph of that article.
12 The other magazine was a very recent one, America.

13 So that there I think is one of the most
14 misinterpreted things in this whole controversy. There
15 are many people who assume the Catholic church is against
16 this. I have seen no indication of that. The Catholic
17 War Veterans a few years ago passed a resolution in
18 favor of a national lottery.

19 I also have found that in a number of instances
20 spokesmen for churches who opposed the lottery speak as
21 if they are speaking in behalf of their congregations,

1 and I have found in speaking to members of the congre-
2 gations that they do not speak for these congregations
3 at all, that the majority of them are in favor of a
4 lottery. I have already spoken before one congregation
5 where the pastor was very much opposed to it, and about
6 half the people who attended the meeting showed disagree-
7 ment with the pastor by expressing themselves in one
8 way or the other. Nobody expressed agreement with him.

9 I have had polls taken in various districts
10 of Baltimore City. I found the average was 90 per cent
11 in favor of a lottery. I found in Baltimore County it
12 was 85 per cent in favor of a lottery. In Anne Arundel
13 County 86 per cent. I was informed very recently, early
14 part of this year, I would say, I believe about February,
15 that station WAQE conducted a referendum and found two
16 and a half to one in favor of a lottery.

17 So the mere fact that there are certain spokes-
18 men who speak in behalf of their congregations doesn't
19 necessarily mean that their congregations are in agree-
20 ment with their statements. I feel that a provision such
21 as this does not belong in our new Constitution. There

1 is a great deal of housekeeping, as you well know, that
2 has to be done in regard to the formation of a new
3 Constitution. Over the period of years for many
4 reasons we have had certain additions and changes made
5 to the Constitution which has made it into sort of a
6 hodge-podge. Certainly with a new Constitution about
7 to be proposed we don't want any semblance of a hodge-
8 podge. We want the important provisions that belong in
9 a Constitution and we don't want something to stand up
10 like a sore thumb that just happens to be the idea of
11 some people -- and I feel a minority of the people --
12 just doesn't belong in the Constitution.

13 If there is going to be a provision against
14 a lottery, it ought to be in Article 27 of our State Code
15 just as we have against bookmaking or anything of that
16 sort. If it is to be a crime to be prohibited, it ought
17 to be done by statute. It should not be in our state
18 Constitution. It doesn't belong in our new Constitution.

19 I also feel that if there were such an
20 inclusion in the new Constitution, that this would
21 jeopardize the approval of the new Constitution. This is

1 a very controversial thing. As I pointed out before,
2 I have found from my observations and my polls I have
3 taken a great many people against it. I don't feel that
4 the new Constitution, as important as it is, should be
5 jeopardized by inserting a controversial matter that
6 doesn't belong there in the first place.

7 In regard to the lottery itself, I don't
8 intend to go into great detail about the arguments in
9 favor of having a state-operated lottery. This is just
10 incidental to the question before you. But I would like
11 to point out that I have a list here of 81 foreign
12 countries that have lotteries. I think it is out of
13 place to have a provision in our new Maryland Constitution
14 which goes against the trend, world-wide trend, which is
15 going in favor of lotteries. We have all the European
16 countries having lotteries. We have the Asian countries,
17 African countries, the whole Western Hemisphere has
18 lotteries except -- that includes, of course, South
19 America -- except for the United States and Canada. As
20 you know, we do have one state here which has authorized
21 a lottery, New Hampshire. I might remark that the

1 success of a lottery in New Hampshire has been very
2 much misrepresented by the press. Somehow the press
3 generally, especially locally here, are opposed to it.
4 They have given the impression that the New Hampshire
5 lottery is not successful. I state to you that it is
6 successful. The premise upon which they base their
7 contention last year that it wasn't successful is the
8 fact that it didn't bring in as much in revenue the
9 second year as it did the first year. It so happens
10 they are doing better this year, the third year, than
11 they did the second year. So that we can't just depend
12 on how much revenue is coming in in deciding whether it
13 is successful or not. The important thing is that it
14 has increased aid to education in New Hampshire by 50
15 per cent. It has brought in millions of dollars that
16 would otherwise have gone to organized crime.

17 It depends on which publication you are
18 reading as to whether it is successful or not. I think
19 we will recognize Time Magazine as being a reputable,
20 well-recognized magazine. In the issue of April 1, 1966,
21 Time Magazine said "The New Hampshire sweepstakes this

1 month is two years old. In that time the state has
2 grossed ten and a half million dollars from the sweeps
3 of \$3 a ticket. After paying off winners and covering
4 operating expenses, it has distributed \$5,255,000 among
5 local school districts. The lottery has enabled New
6 Hampshire to increase state aid to public education
7 by more than 50 per cent."

8 Nobody has even questioned the fact that
9 this lottery has been operated on a high scale without
10 any hint of skulduggery or dishonesty. It has been
11 operated efficiently and properly and it has been
12 proven in New Hampshire that this can be done. For anyone
13 to say it was a dud, as has been said by the editorials,
14 or a failure, as has been stated by the press locally,
15 just because they didn't bring in as much money in the
16 second year as they did the first year, I think is not
17 a good foundation for such comment.

18 I feel that we ought to take this source of
19 revenue away from the gangsters and the racketeers,
20 channel it away from organized crime and to use it for
21 the benefit of the public. Just as the public is benefiting

1 from the take on pari-mutuel betting, the public can
2 benefit on the basis of receiving part of the funds
3 from a properly operated lottery. It has been stated
4 by people in authority, people who are knowledgeable,
5 that this would hurt organized crime.

6 A man named Edwin Silberling, chief racket
7 buster for Robert Kennedy when he was Attorney General,
8 he has been quoted in the Congressional Record as saying
9 he is for a lottery because he is against organized
10 crime. He feels that if we legalize the lottery, we
11 will take away the main source of revenue from
12 gangsters and will do as much harm to the gangsters as
13 we did when we repealed prohibition. He said "You can't
14 keep people from gambling" -- I think everybody recognizes
15 this, I think everybody knows how much gambling is going
16 on right under our very noses locally -- "but who is
17 getting the benefit? Some big numbers backers are
18 being made extremely wealthy by this operation which
19 doesn't do the public any good. If we would have a
20 cleanly-operated, state-operated lottery, the taxpayers
21 would get much needed relief. We all know how much they

1 need that relief."

2 So I am urging that you do not go against
3 the trend throughout the world. There have been more and
4 more countries undertaking the lottery as a means of
5 getting revenue for many purposes. I note in Germany,
6 the last report as of two years ago, their gross
7 receipts were 433 million dollars, net income of 175
8 million dollars, which was used for youth, sports
9 activities, and health. Of course, we have had many
10 other countries benefit in many ways, schools, social
11 welfare. We are very familiar with the Irish
12 Sweepstakes. Ireland had the worst tubercular rate,
13 I understand, in the world until they started their
14 sweepstakes and built their fine hospitals and corrected
15 that situation.

16 I ask in the name of the public, yes, in
17 the name of morality, that we use this human trait of
18 gambling for beneficial purposes instead of using it to
19 fatten the racketeers.

20 I ask you to keep this provision out of our
21 new Constitution and not to jeopardize the acceptance

1 by the public by inserting it, not to put in a provision
2 that doesn't belong there, and I ask you to delete it
3 completely and make no reference to it in the new
4 Constitution.

5 THE CHAIRMAN: Thank you, Mr. Pressman.

6 Senator Hoff?

7 MR. HOFF: No questions.

8 THE CHAIRMAN: I only have one or two,
9 Mr. Pressman. The first is this. I take it the main
10 thrust of your presentation here this afternoon is that
11 the prohibition against a lottery is just not of
12 Constitutional proportion, that it doesn't belong in the
13 Constitution because that kind of a controversial issue,
14 which is one that really should be decided by the repre-
15 sentatives of the people, ought to be left to their
16 decision.

17 MR. PRESSMAN: That is right.

18 THE CHAIRMAN: And you are really not arguing
19 the question of whether or not a lottery in and of itself
20 or vel non is a good idea or bad idea here today. We
21 know how you stand on it.

1 MR.PRESSMAN: This is only incidental for
2 the reason I wanted it made clear that in my opinion
3 there is a good, strong case against having such a provi-
4 sion at all, and where there is a debatable matter such as
5 that, it doesn't belong in the Constitution at all.
6 This is only incidental to the main thrust, as you have
7 stated.

8 THE CHAIRMAN: Do you know whether or not
9 any other states have provisions of this kind in their
10 Constitution?

11 MR. PRESSMAN: I have no knowledge of such
12 provisions. I do know,I might say, that the State of
13 New York has a referendum coming up before the people
14 in November. I don't really know of any such provisions
15 in any other Constitution.

16 THE CHAIRMAN: I would suppose that if this
17 provision were taken out of the Constitution and the
18 Legislature should adopt an act which would authorize
19 a lottery, that somebody could petition that to referendum
20 too.

21 MR. PRESSMAN: They might very well do it.

1 I might also call to your attention, you are probably
2 familiar, however, with the fact, that in the last
3 Legislature for the first time there was a provision
4 for having the Constitutional amendment to take this
5 provision, to permit a state-operated lottery to be
6 enacted by the Legislature. It passed the House for
7 the first time. Over a period of years it kept getting
8 more and more popular until it finally passed the House,
9 but this was just a day before it adjourned and did not
10 get to any action before the Senate. But it shows
11 that the legislative support has grown by leaps and
12 bounds. It wasn't too long ago where a vote against the
13 lottery was overwhelming. Then the year before last it
14 lost by 20 votes. Then during this year it actually
15 passed. The Senate did not act on it.

16 THE CHAIRMAN: One final question. Assuming
17 that the Committee thought it desirable to have the
18 Constitution say something about a lottery but would
19 in effect say that a lottery could be -- I am not prejudg-
20 ing this in any way parenthetically -- but that a lottery
21 could be permitted if the General Assembly went along

1 with it, how would you feel about that? In other
2 words, what I am thinking of it^s if you took the prohibi-
3 tion out entirely, could Baltimore City, for example,
4 put in a lottery or Baltimore County or Carroll County?
5 Would you advocate any control over it all?

6 MR.PRESSMAN: I think the control ought to
7 be legislative. I think for me to say otherwise would
8 be inconsistent with the main thrust of my argument.
9 I don't think there is any provision about the lottery
10 that belongs in the Constitution. I think this is the
11 jurisdiction of the Legislature and should be with the
12 Legislature and nowhere else. As I mentioned at the
13 outset, I feel and Mr. Barnes, now Judge Barnes, did
14 state in his brief that he felt that the present provi-
15 sion doesn't prohibit a locality from having a lottery.
16 It doesn't prohibit the state from having a lottery. It
17 merely prohibits a lottery grant. Of course, that is
18 debatable and there are many people who feel to the
19 contrary. They feel this provision says you just can't
20 have any lotteries.

21 But my main argument here is that no provision

1 about the lottery belongs there. Of course, I would
2 be pleased from the standpoint of my being for a
3 lottery to have a provision in the Constitution that
4 says the Legislature may authorize the lottery rather
5 than have this provision we have now. But this would
6 be inconsistent with my main argument. I say it doesn't
7 belong in the new Constitution.

8 THE CHAIRMAN: It wouldn't commend itself,
9 would it, to have a proliferation of county lotteries
10 and city lotteries and town lotteries?

11 MR. PRESSMAN: I don't think it would be
12 good at all. I think it would create a great deal of
13 confusion and wouldn't accomplish the purposes that a
14 state-operated lottery would accomplish. The one that
15 I propose would be a lottery operated by the state for
16 the benefit of the local subdivisions and the money would
17 be distributed to the local subdivisions in proportion
18 to the amount of tickets sold in those local subdivisions.
19 I feel that some of the local subdivisions would probably
20 want to have some formula which would be a little different
21 from that in that some of the outlying counties, which

1 wouldn't have much chance of selling many tickets such
2 as metropolitan areas would have, by selling to visitors,
3 might benefit somewhat because the state's power is being
4 used and they should benefit to some extent. I would be
5 in favor of some compromise in that regard. But the
6 main difficulty would be to have it operated by the
7 state for the benefit of the local subdivisions and to
8 have it ear-marked for schools.

9 If you had every county running a lottery,
10 I think all of them would be worse off. It would be
11 better for all the counties and the City of Baltimore
12 if the state would operate it. It would be run much
13 more efficiently that way and everyone would benefit
14 from it.

15 THE CHAIRMAN: Mr. Sachs, our reporter, may
16 have a question or two.

17 MR. SACHS: Only this, Mr. Pressman. Would
18 you be kind enough to make available to the Committee
19 copies or reprints of the various items you made reference
20 to, Judge Barnes' brief, the various magazine articles,
21 and particularly the data that you apparently had in your

1 possession concerning the details about other counties
2 which have lotteries. I think it might be helpful to
3 us to have it.

4 MR. PRESSMAN: If you wish I can leave this
5 with you now on your promise to return it to me. You
6 can do with it what you will.

7 MR. SACHS: We will Xerox it and return it.
8 Thank you very much.

9 MR. PRESSMAN: Very well.

10 MR. SACHS: One other point, Mr. Pressman,
11 if you will. Do I understand you correctly to say
12 that the evils that were felt to be attendant upon the
13 lottery operations prior to the constitutional provision
14 enacted in 1851, I believe, were because these were
15 grants to private entrepreneurs so to speak and not
16 state-operated lotteries?

17 MR. PRESSMAN: That is right, these evils
18 arose out of these operations by private individuals and
19 organizations.

20 I might say that during that period of time
21 there were other evils in other areas. There were very

1 terrible evils committed by corporations and by banks.
2 It was a very unusual time, a time of unrest, time of
3 lawlessness, especially in this area. You can't blame
4 all the troubles that we had at that time on the lotteries.
5 This was one of the things that went bad as well as banks
6 and corporations.

7 MR. SACHS: I have particularly in mind
8 some research that this Committee has undertaken. We
9 have examined primarily the debates and reports of the
10 debates of the 1851 convention. Just as one example of
11 the kind of heat really generated by this provision, the
12 comments of one delegate who was reported as follows
13 on the lottery, he said that he considered the whole
14 system as one of complicated fraud which had been
15 practiced upon the state for years at great injury of
16 the community economically as well as morally. He went
17 on to say that out of this illicit trade the state has
18 realized \$52,000 annually not as "the price of blood"
19 but of all of crime, speculation, and fraud, the very
20 worst kind of gambling, the most unfair for those who are
21 participating in it, and the most injurious to the whole

1 community. He said it was an injury to the state
2 because it destroyed industry itself which no profits
3 could replace.

4 Apparently there was very, very strong feeling
5 at that time.

6 MR. PRESSMAN: Yes, and I think on good ground
7 too perhaps he was overstating the case but it was
8 very much abused. There is no question about that.
9 However, we must distinguish between having gambling
10 operated privately by private people or organizations
11 and having an enterprise run by the state on a high plane
12 such as has been run in New Hampshire. This is the big
13 difference in my opinion between authorizing a lottery
14 that can be operated by private individuals and authoriz-
15 ing one which can be operated by the state itself where
16 all the safe guards can be exercised.

17 I might also point out despite all these
18 statements about the abuses, I agree they are well founded
19 statements, I would like to point out we have had many,
20 many good benefits from the lotteries in Maryland. We
21 had the University of Maryland, we are right in one of the

1 buildings, this building wasn't built by lottery but
2 the original buildings of University of Maryland were
3 built by lottery. The Cathedral, deepening of the
4 Jones Falls, Washington College, First Presbyterian
5 Church, St. Paul's Episcopal Church, Baltimore Hospital,
6 Washington Monument -- I still have an authentic ticket
7 on that lottery on the Washington Monument in my file.
8 Lexington Market, Susquehanna Canal, German Reform
9 Church, hall for the Masonic Lodge. Of course, a number
10 of places of learning throughout the country were built
11 by lotteries. Harvard, Princeton, Dartmouth, Columbia,
12 Brown, Dickinson, Rutgers, St. Johns Union, William and
13 Mary, Yale, University of Delaware, University of
14 Pennsylvania, all original buildings built by lotteries.
15 Benjamin Franklin sponsored a lottery to buy a cannon
16 for Philadelphia. George Washington ran a lottery to
17 finance the building of a road over the Cumberland
18 Mountains.

19 You see we have had some very good purposes
20 served by the lottery in the past as well as having had
21 certain abuses.

1 THE CHAIRMAN: You know, that is very
2 interesting. The University, I am a member of its
3 Board of Regents, I didn't know that. Which building was
4 it? Baltimore branch or College Park?

5 MR. PRESSMAN: I am not sure. I do know I
6 had a newspaper item called the Baltimore Patriot and
7 Observer that someone was kind enough to show me about
8 1921, older than any Baltimore Sunpaper. It had these
9 big ads on this University of Maryland lottery. The
10 top prize was \$50,000. In those days, mind you, that
11 was like a million dollars today. That was top prize. It
12 had prizes of \$25,000 and \$10,000. On the same page
13 another big ad giving the winners of the Cathedral lottery.

14 THE CHAIRMAN: That must have been for the
15 medical school. That was the original part of the
16 university. Very interesting. Any other questions?

17 MR. HOFF: No questions.

18 THE CHAIRMAN: All right. We are delighted
19 to have you stay and make a statement in rebuttal because
20 I assume now we are going to hear a little different
21 point of view.

1 MR. PRESSMAN: I think so.

2 THE CHAIRMAN: If you have the time, Mr.
3 Pressman, we would be delighted to have you continue on
4 with us.

5 MR. PRESSMAN: All right. I have this
6 material here I will be glad to leave here but I would
7 like to have it back.

8 MR. SACHS: I will make sure it is returned
9 to you promptly.

10 THE CHAIRMAN: Who is present here who would
11 like to speak in favor of the retention of Section 36
12 of Article 3? Gentlemen, will you let us have your
13 names, please, and who you represent.

14 MR. MILLS: Harry Mills.

15 THE CHAIRMAN: All right, Mr. Mills, would
16 you care to come right up. Both you gentlemen come up
17 and sit by Mr. Pressman. He is really a very nice fellow
18 and he will not bite you.

19 Mr. Mills, I think you have given us a copy
20 of your statement.

21 STATEMENT OF HARRY MILLS

1 MR. MILLS: I have given you a copy of the
2 statement of Bishop Doll. Bishop Doll is not in the
3 city today. However, I am Executive Director of the
4 Division of Christian Social Relations for the Diocese
5 and I am here with his statement. I also will offer to
6 the Committee, I don't have it with me, we have other
7 material we will be glad to submit to you as to the
8 theological position in our opposition to the lottery
9 and also a copy of the resolution passed by our Executive
10 Council of the Diocese on January 20, 1964, opposing the
11 use of a lottery as a means of aiding the state in its
12 fiscal responsibility.

13 THE CHAIRMAN: I think the Committee would be
14 very happy to have copies of all that material, Mr. Mills.

15 MR. MILLS: Before I read Bishop Doll's
16 statement, I have heard a remark here today that I have
17 heard many times before as to the propriety of church
18 leaders and rectors addressing themselves to problems
19 of conscience in view of the fact that they do not
20 always speak for all of the members of their union.

21 If we are to follow this line of logic, we

1 put ourselves in the position, if we consider a Bishop
2 or a Cardinal or a rector or a pastor, a pastor in the
3 sense of the word that it has been in the church, that
4 he is the pastor to a flock, why then if we accept the
5 logic that I have heard advanced here, we enter the
6 unusual position of having the sheep lead the shepherd.
7 I find this logic rather fallacious. Sometimes the sheep
8 are made to go in some directions for their own good
9 which is not necessarily the direction they would choose
10 if they had their own head. This is the statement made
11 by Bishop Doll.

12 "The appeal of a lottery is strong because
13 nobody wants to raise taxes. Income from a lottery is
14 described as easy money. This simply means, I do
15 not have to pay the cost -- but somebody does.

16 "This is done by appealing to the base motives
17 in man's nature, the desire to bet much for little, or
18 better, to get something for nothing. For you to get
19 something for nothing means a great many other people get
20 nothing for something. There is basically no difference
21 between appealing to man's greed in a lottery and the old

1 flim-flam game we read about so often in the papers.
2 It is only one further step to getting what I want by
3 purse-snatching or robbery. They are equally dishonest
4 means and the lottery is worse because it undermines the
5 moral fibres of the citizens.

6 "We have been told that a lottery 'would be
7 a big step toward eliminating organized crime in Maryland.'
8 This is either wishful thinking or refusal to face the
9 facts.

10 "The State must be consistent. It is set
11 to protect its citizens and work for their well-being,
12 not to defraud them, and to throw the majesty of the
13 Law over an immoral practice and to make it legal does
14 not make it right.

15 "Look at the influence on young people. If
16 the State says it is right to make easy money, this says
17 to the young person, it is right for me to make easy money.
18 This pulls the foundation stones of honesty, integrity and
19 the principle of hard work from under the young citizen.

20 "This is a basic matter. A government that
21 cannot be supported by the people governed is admitting

1 that democracy has failed. The attempt to avoid the
2 responsibility of our obligations by resorting to the
3 immoral means of a lottery is not far from attempting
4 to avoid responsibility by taking dope to live in a
5 dream world for a while. In both cases, there will be
6 a rude awakening.

7 "We are now in the process of abolishing
8 the entrenched evil of slot machines. Why would we
9 open the flood gate of crime in a lottery?"

10 THE CHAIRMAN: Do you care to add to that,
11 Mr. Mills, in any way?

12 MR. MILLS: Only that our group, the
13 Committee which comprise the Division of Christian
14 Social Relations in the Diocese, feel very strongly about
15 this next to the last paragraph. That is that a govern-
16 ment that cannot be supported by the people governed is
17 admitting that democracy has failed. Then I think this
18 is a good point. It is somewhat difficult to consider
19 a complete revitalization of our fiscal policies in
20 this state and it is very easy to take the onus off us
21 by advocating a lottery. But basically the church's

1 position can't change. Its influence on our young people
2 to advocate easy money, whether it be a state or
3 individual, we consider to be inconsistent with Christian
4 principles. This is our position. It is really quite
5 short, as you said when I brought you the statement.

6 THE CHAIRMAN: Very well. Any questions?

7 MR. HOFF: Do you distinguish between
8 lotteries and pari-mutuel betting?

9 MR. MILLS: In our instance, no. At our
10 next general convention we are introducing resolutions
11 as far as all forms of gambling are concerned.

12 MR. HOFF: Thank you.

13 THE CHAIRMAN: Mr. Mills, both you and
14 Mr. Pressman agree on one thing at least. That is you
15 both say the state must be consistent.

16 MR. MILLS: Right. Mr. Pressman and I
17 probably agree on many things.

18 THE CHAIRMAN: I am sure you do. But I,
19 of course, have reference to this particular area of inquiry
20 that we have this afternoon. Mr. Pressman's position, as
21 I understand it, is that the provision dealing with the

1 lottery just isn't of constitutional proportion and
2 that if it is to be prohibited or if it is to be
3 permitted, these are questions which should be left to
4 the Legislature and should not be hemmed in by constitu-
5 tional mandate to outlaw it.

6 He further says if you are going to outlaw
7 the lottery, you ought to outlaw pari-mutuel betting,
8 you ought to outlaw all kinds of other games of chance,
9 I suppose, such as the churchs have, volunteer firemen
10 have, bingo and everything else.

11 Would you care, you don't have to, to address
12 any remarks to this particular proposition?

13 MR. MILLS: I wouldn't care to address
14 myself in this area. It is sometimes easy to sit in the
15 catbird seat. I have enough trouble. I am sure we
16 Episcopalians have enough trouble keeping our own house in
17 order without we being presumptuous enough to tell our
18 good friends the Romans or our Baptist friends.

19 As far as the constitutional aspect of it, I
20 must admit I did not come here prepared for this. This
21 was thrown at me at 10 o'clock this morning with the

1 Bishop being out of town. I am leaving for Chicago
2 this evening. Frankly, I hadn't given the ramifications
3 of exclusion in the Constitution or failure to include
4 it and leave it for consideration by the Legislature --
5 anything I would say now would be off the top of my head,
6 and this is a dangerous practice.

7 THE CHAIRMAN: Fine. All right, you are Mr.
8 Gresham?

9 MR.GRESHAM: Yes.

10 STATEMENT OF DR. ROY D. GRESHAM

11 THE CHAIRMAN: We have your letter of
12 August 10. The Committee have all read it. It is a fine
13 letter. It will be filed with the minutes of the
14 Committee.

15 I am wondering, Mr. Gresham, if you have any-
16 thing further you would like to say by way of supplemen-
17 tation or elaboration on the points made in your letter.

18 MR. GRESHAM: I think there is really no
19 point here in taking any time in reviewing the statement
20 as I had presented to you, which from several standpoints,
21 of course, is in direct opposition to what Mr. Pressman

1 has indicated both from creative and economic and productive
2 standpoints and so forth. I will not enlarge on that
3 point, since this is going to be filed with the Committee
4 and the Committee will have a chance to read it in its
5 entirety.

6 I think the fact that there is an organiza-
7 tion by the name of Gambling Anonymous, if I am correct,
8 now that gives some indication that perhaps those persons
9 who are compulsive gamblers are just as sick as the
10 compulsive drinker, I will not go into the background
11 of this. At least Gambling Anonymous is an organization
12 in operation and there are some indications, of course,
13 that this is a menace to society.

14 I think that I would like to make one addi-
15 tional statement. That is this. That whether a thing
16 is in the church or out of the church does not necessarily
17 make it right. The fact that we might find a man who has
18 made his money gambling and who turns out to be a great
19 philanthropist, the fact that he is willing then to give
20 certainly doesn't make the manner in which he earned his
21 money right.

1 I do want to make one other statement. Mr.
2 Pressman has referred to it already in regard to the
3 New Hampshire lottery. I hear him reading from the
4 Baptist Standard which is the Baptist state paper for the
5 State of Texas. Dr. E. S. James is the editor. This
6 is from the February 16, 1966, issue of that paper. He
7 quotes Religious News Service saying that the New Hampshire
8 Sweepstakes, the only state-operated lottery in the
9 United States, was a flop this year. Opposed by
10 protestant leaders and sponsored by Governor John W.
11 King, the lottery system was legalized with the predic-
12 tion it would produce great revenues and reduce the real
13 estate taxes of the people. In the second year of its
14 operation, it produced \$2,487,000 in taxes instead of the
15 \$5,000,000 predicted by the Governor. The lottery take
16 for the state amounted to \$24.15 per school pupil.

17 There was one other thing here I think that
18 we need to mention in connection with this that Mr.
19 Pressman did not mention in regard to the state-operated
20 lottery system. That is this: That the state-operated
21 lottery system did more than fall flat on producing

1 revenues. It has created further division among church
2 people. Raymond Goupil, Chairman of the Rochester
3 Taxpayers Association, has charged Governor King and the
4 state with being unfair in not allocating part of the
5 lottery taxes to parochial schools. He maintains that
6 the system of distribution is grossly unfair since in
7 some communities 75 per cent of the students are in
8 Catholic parochial schools. Goupil stated that the
9 Governor wanted all credit for legalizing the lottery
10 and consequently should be blamed for discrimination
11 in the tax allocation. That is a problem that has come
12 up in connection with that and in that regard.

13 I want to make this other statement also. I
14 want it perfectly clear that so far as I personally am
15 concerned, I speak for myself. In our church polity and
16 procedure no Baptist speaks for any other Baptist other
17 than himself. I have no right to speak in any other
18 means but I do believe I am in a better position to speak
19 for Baptists generally than Mr. Pressman would be and
20 it is for that reason that I come to at least give some
21 comments since I happen to have the position that I do.

1 THE CHAIRMAN: I would guess, Mr. Pressman
2 would agree with that.

3 MR. GRESHAM: I would think so.

4 THE CHAIRMAN: Mr. Hoff?

5 MR. HOFF: No questions. Mr. Sachs?

6 MR. SACHS: Mr. Gresham, would you speak
7 to, if you care to, to the question that Mr. Case addressed
8 to Mr. Miles, namely, something like this. To be sure,
9 your arguments would appropriately go to a legislative
10 body considering whether or not to enact a state-wide
11 lottery, but would you tell us, if you will, what special
12 reasons, if any, there are for an anti-lottery provision
13 to be in the organic law of the state, the Constitution.
14 Do you have any special reasons that you want to offer?
15 MR. GRESHAM: I think here that as I have indicated in my
16 letter that the statistics, that the studies by the
17 Attorney General of the United States, by the leaders,
18 and so forth, indicate that for every dollar that is
19 raised in this area of gambling, whether it be lottery
20 or otherwise, at least \$5 is spent in other areas like
21 police costs, court costs, et cetera. I think there

1 have been studies made in the area of gambling by enough
2 committees that would establish the fact that we could
3 certainly include this in our Constitution as something
4 that is valid.

5 I made the statement here that the greatest
6 resource in our State is the people of our state. I
7 believe anything that, of course, would have a tendency
8 to weaken or to destroy the people would not be out of
9 order as being included in our State Constitution.

10 MR. SACHS: Do you think the existing bar
11 ought to be broadened to make it clear that, for example,
12 pari-mutuel betting be abolished?

13 MR. GRESHAM: I certainly would favor this.

14 MR. SACHS: Favor broadening the provision?

15 MR. GRESHAM: Favor broadening it. Instead
16 of excluding this, I would be in favor of broadening it.

17 MR. SACHS: Thank you.

18 THE CHAIRMAN: One point you made in your
19 letter, Mr. Gresham, that interested me was the statement
20 that gambling prevents commercial growth and keeps
21 industry out of a state. You were quoting the NBC White

1 Paper on Gambling at that point.

2 MR. GRESHAM: This is correct.

3 THE CHAIRMAN: Is this a fairly well
4 documented statement in your judgment?

5 MR. GRESHAM: I am quoting from Starkey's
6 book. I could not validate it any further than the
7 quote that I made. I would not be in a position to
8 validate it further than this.

9 THE CHAIRMAN: You don't happen to know
10 whether New Hampshire's industrial growth such as it
11 may have been has deteriorated since they put in a
12 lottery up there?

13 MR. GRESHAM: No, I do not know this.

14 THE CHAIRMAN: Anything else? Does anyone
15 else here care to speak for the retention of the present
16 provision? I would like before we ask Mr. Pressman if
17 he has anything to say in rebuttal, I would like to say
18 that in scheduling this hearing today the Committee did
19 notify what it considered to be a large and representative
20 group of persons who might like to be heard on this
21 subject. It is quite obvious that the proponents of the

1 argument are well represented by Mr. Pressman and I think
2 the opponents of deleting the provision have also been
3 very well represented by the spokesmen for the Episcopal
4 and Baptist churches.

5 However, it is disappointing to the Chairman
6 at least that we didn't have a larger representation
7 and cross-section of people present at this hearing. I
8 am wondering whether or not it indicates, as Mr. Pressman
9 has suggested, some lack of real interest in continuing
10 this provision in the Constitution. I think it certainly
11 might be interpreted that way.

12 So that the record can be absolutely clear,
13 I am going to ask the reporter to place into the record
14 people who were invited to this meeting and we can then
15 see who did and who did not attend.

16 August 8, 1966

17 TO: The Committee on State Finance and
18 Taxation

19 The following persons or organizations have
20 received the same letter as attached addressed to Mr.
21 Pressman:

1 Criminal Justice Commission
2 22 Light Street
3 Baltimore, Maryland 21202

4 Maryland Crime Investigation Commission
5 623 Edmondson Avenue
6 Baltimore, Maryland 21201

7 Lawrence Cardinal Shehan
8 320 Cathedral Street
9 Baltimore, Maryland 21202

10 Francis X. Gallagher, Esquire
11 Suite 515
12 One Charles Center
13 Baltimore, Maryland 21201

14 The Very Reverend Harry L. Doll
15 Diocese of Maryland
16 105 West Monument Street
17 Baltimore, Maryland 21201

18 William L. Marbury, Esquire
19 900 First National Bank Building
20 Baltimore, Maryland 21202

21 The Reverend Fred M. Webber
General Presbytery
Chairman of the Synod Staff
320 Hillen Road
Baltimore, Maryland 21204

Harry E. Silverwood, Esquire
900 Aurora Federal Building
Baltimore, Maryland 21201

The Very Reverend John Wesley Lord
100 Maryland Avenue, N. E.
Washington, D. C. 20002

William B. Stansbury, Esquire
405 Mercantile Trust Building
Baltimore, Maryland 21202

1 Dr. Roy D. Gresham
2 Executive Secretary
3 Baptist Convention of Maryland
4 1313 York Road
5 Baltimore, Maryland 21204

6 The Very Reverend John M. Peabody
7 President
8 Maryland Council of Churches
9 Cathedral of the Incarnation
10 St. Paul Street and University Parkway
11 Baltimore, Maryland 21210

12 Rabbi Samuel Rosenblatt
13 President
14 Board of Rabbis of Baltimore City
15 3605 Springdale Avenue
16 Baltimore, Maryland 21202

17 Mr. Leon Sachs
18 Executive Director
19 Baltimore Jewish Council
20 Maryland National Bank Building
21 Baltimore, Maryland 21202

Rev. Donzel C. Wildey
Executive Secretary
Maryland Council of Churches
14 West Madison Street
Baltimore, Maryland 21201

cc: Honorable William Preston Lane, Jr.
H. Vernon Eney, Esquire
Robert J. Martineau, Esquire
Stephen H. Sachs, Esquire, Reporter

MR. PRESSMAN: I would like to say a few
words in rebuttal.

THE CHAIRMAN: Delighted to hear you.

1 REBUTTAL STATEMENT OF HYMAN A. PRESSMAN

2 MR. PRESSMAN: I would like to commend
3 Mr. Gresham and Mr. Mills for being consistent in saying
4 they were opposed to the pari-mutuel betting as well as
5 the lottery which cannot be said in regard to certain
6 political people who are opposed to the lottery but
7 wouldn't be consistent. They are still for having pari-
8 mutuel betting.

9 I would like to clarify my statement in
10 regard to the issuance of statements by representatives
11 of the churches. I have absolutely no objection or
12 criticism of any statements made by representatives of
13 churches, I think it is completely within their jurisdic-
14 tion and their responsibility to issue statements in
15 regard to the morality of a lottery or anything
16 else. The point I wanted to make was that when they do
17 speak, they are not speaking for their congregations.
18 In other words, while a leader of a church may speak
19 properly in regard to the theological outlook on
20 certain subjects -- and he is perfectly within his rights
21 in doing this and should do this -- I want to point out

1 this doesn't necessarily mean that because a leader of
2 a certain denomination is opposed to it or says that
3 the church is opposed to it, I am sure he knows whereof
4 he speaks when he says the church is opposed to it, but
5 this does not mean all members of the denomination or
6 even the great majority of them are in sympathy with
7 this feeling.

8 In other words, I am not saying that the
9 sheep shall lead the shepherd. I think it is proper that
10 the shepherd shall lead the sheep. I merely wanted to
11 point out from my observations and my polls that I feel
12 convinced that the great majority of the people are
13 opposed to the prohibition of a lottery. They are in
14 favor of a state-operated lottery to help alleviate the
15 tax situation and that the insertion of such a provision
16 in the Constitution would only jeopardize the Constitution
17 as a whole.

18 I also would like to contest the observation
19 made by Bishop Doll in regard to purse-snatching and
20 robbery. I just can't see how the purse-snatching and
21 robbery can be compared to a lottery. No one forces

1 anyone to buy a lottery ticket. When you snatch someone's
2 purse or rob someone, you do it against his will. And
3 nobody actually forces anyone to buy lottery tickets or
4 to enter in any type of gambling.

5 When it is proposed that a lottery operated
6 by the state would cause all these hardships that are
7 spoken about, for example, those who are compulsive
8 gamblers, those compulsive gamblers will not be affected
9 one way or another as to whether/^{you}have a state-operated
10 or not because compulsive gamblers will always find the
11 means of gambling and no one in this world will be able
12 to stop them. Many attempts have been made to prevent the
13 illegal lottery and other illegal gambling without any
14 success whatsoever at any place or any area.

15 So that these people are diseased, I agree.
16 They are just as diseased as alcoholics. We found
17 that we could not prevent people from drinking by having
18 prohibition. Nor can you prevent people from gambling
19 by having any prohibition against gambling.

20 This does not create the evil that he speaks
21 of. The evil is there. This will not change it in any

1 way whatsoever.

2 What I am proposing is to take the revenues
3 that this creates away from organized crime and give it
4 over to the benefit of the people. Thank you.

5 THE CHAIRMAN: Before you leave, Mr. Pressman,
6 those comments you had from the Catholic church, am I
7 mistaken in believing that they indicate at least they
8 would not object to the position you are taking as far
9 as the Constitution itself is concerned?

10 MR. PRESSMAN: There was no statement about
11 the Constitution. In effect it was that gambling is
12 not immoral of itself, that there are methods wherein
13 gambling can be conducted in such a way as to not be
14 immoral and that if you had a lottery which is operated
15 in a fair way, you have a fair percentage of the money
16 taken given out as prizes and used for beneficial
17 purposes, that this would be better than having money
18 go to organized crime. This is the position taken by
19 Father Gorman in Time Magazine and the position as to
20 gambling generally is the position taken in America
21 Magazine and copies have been left.

1 THE CHAIRMAN: Thank you.

2 MR. MILLS: May I say probably as far as
3 church representation who have been invited here Mr.
4 Bunce, for example, my counter-part with the Methodist
5 church is in Maine. Mr. Webber my counter-part with the
6 Lutheran Church is also on vacation. August is a bad
7 month for church men. I think I and Mr. Gresham seem
8 to be the only unlucky ones stuck in town. I know of
9 at least four church leaders on your mailing who are
10 probably in town at this time.

11 THE CHAIRMAN: That might account for it.
12 I didn't want to give the idea I don't think you are
13 interested.

14 MR. MILLS: I agree it is disappointing.

15 THE CHAIRMAN: Perhaps they are interested
16 but feel that not appearing here gives evidence of their
17 feeling in the matter. What you are saying suggests that
18 this may not be true.

19 MR. GRESHAM: Did you have any further
20 response from this group, any statements?

21 THE CHAIRMAN: I don't think we did. Anything

1 else, gentlemen? Thank you very much, gentlemen.
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I N D E X

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1 CONSTITUTIONAL CONVENTION COMMISSION

2 Finance Committee and Executive Committee

3
4 Meeting of the Constitutional Convention
5 Commission, Finance Committee and Executive Committee,
6 with the Honorable Louis L. Goldstein, Comptroller of
7 the State of Maryland, held on Thursday, November 17,
8 1966, at 10 o'clock a.m., at the State Office Building,
9 Baltimore, Maryland.

10
11 PRESENT:

12 Richard W. Case, Esquire,
13 Presiding as Chairman
14 H. Vernon Eney, Esquire,
15 Chairman of the Commission
16 John C. Brooks, Esquire, Member
17 Mr. E. Philip Sayre, Member
18 Stanford Hoff, Esquire, Member
19 Dr. Martin D. Jenkins, Member
20 Charles Mindel, Esquire, Member

21 ALSO PRESENT:

 Mr. Garrett Power, Reporter,
 Executive Committee
 Stephen H. Sachs, Esquire, Reporter,
 Finance Committee
 Mr. Bernard F. Nossel,
 Chief Deputy Comptroller

Reported by:
C. J. Hunt

1 THE CHAIRMAN: Mr. Comptroller, this is a
2 joint meeting of the Committee on State Taxation and
3 Finance and the Executive Committee of the Constitutional
4 Convention. Members of both of these Committees are here
5 this morning, and the reporters to both of those Com-
6 mittees are here, Mr. Sachs and Mr. Power. Of course,
7 Mr. Eney, the Chairman of the Commission, is also here.

8 This meeting has been called to get your
9 views on a number of issues, and I might say for myself,
10 personally, and I am sure for every person who is here,
11 that we are very grateful to you to give us the opportunity
12 to talk to you and get your views in connection with this
13 very important subject.

14 The first thing that I would like to call to
15 your attention is that the Commission has to date approved
16 a fairly elaborate budget provision for the new State
17 Constitution, which provision isn't exactly the same as
18 the current Section 52 of Article III of the Constitution,
19 which, as you know, controls the present budget. We
20 feel it has some innovations and some distinct improve-
21 ments, but suffice it to say that what the amendment goes

1 to is the continuation of a very strong executive type
2 budget, which places the Governor in an extremely strong
3 position in the control of the disposition of State
4 revenues.

5 This is a continuation of the general provisions
6 and methodologies which we have had here in the State
7 really since 1916. Maryland, as you probably know,
8 pioneered in the executive type budget.

9 As a counterpoint to the method by which funds
10 flow out of the State, flow out of the State Treasury
11 and into the various designated items is the question of
12 whether or not there should be a constitutional provision
13 or provisions relating to the receipt of funds.

14 At present there is, of course, as you know,
15 the Section in the Constitution dealing with the Treasury
16 Department, which sets up two constitutional officers,
17 namely, the State Treasurer, and of course, the Office
18 of the Comptroller, and through the years of the two,
19 the Office of the Comptroller has become the much more
20 important office, being elected by the people, and having
21 a great many functions, all of which are specified in

1 either the Constitution or the General Laws of the State.

2 I think it is fair to state that as of the
3 present time, there has been no definitive judgment on
4 this vital question by the Commission. Certainly, there
5 has been none by the Committee on State Finance and
6 Taxation, so what we are here today to talk about is
7 whether or not there should be a department recognized
8 in the Constitution which would have the duty of, or
9 obligation of gathering in the money or perhaps paying
10 it out on warrants stated through the statute laws or
11 otherwise, and just what function this office should play.

12 I should say one or two other things which
13 I think you ought to know. There has been some discus-
14 sion that the constitutional office of Comptroller and
15 State Treasurer should no longer be retained in the basic
16 document. I don't think this is exactly news to you be-
17 cause it has been reported in the press. The reasons for
18 this are not necessary to go into now, but I think it is
19 fair to say, and I again want to repeat, that as far as
20 our Committee is concerned, this is not a definitive
21 judgment and one which we all have very open minds on,

1 and to that end, I think we would like to get your views.
2 So, if you would like to carry on with reading the state-
3 ment or asking that it be included in the record and
4 then just discussing it in your own way, however you
5 want to work it, Louie, is perfectly all right with me.

6 MR. GOLDSTEIN: Right. Thank you, Mr. Case.
7 Mr. Eney and Members of the Committee and the reporters.
8 I appreciate the opportunity of appearing before your
9 Commission to express my views. I believe probably the
10 best way to approach it would be for me to read the
11 statement, and if you want, you can stop me at any part
12 of it, and I will very happy to answer any questions
13 either on the record or off the record, as the case may
14 be.

15 THE CHAIRMAN: Fine. Although we have a
16 reporter in our good friend, Mr. Hunt, here today, this
17 is not to lend any formality to this particular meeting
18 with you, but really to have everything that you might
19 say made a part of the permanent record, and therefore
20 to give it the dignity that it is entitled to have and
21 share with other statements made by principal State

1 officers in the State. I would think we would go ahead
2 in an informal style, just as if Mr. Hunt weren't here.

3 MR. GOLDSTEIN: Thank you. It is certainly
4 nice to have you all in the office.

5 The Office of Comptroller of the Treasury was
6 originally created by the Constitution of 1851, Article
7 6, Section 1. The Comptroller is now chosen by the
8 qualified electors of the State for a term of four years.
9 The Comptroller and the Treasurer constitute the Treasury
10 Department of the State, but it is significant to note
11 that while the Comptroller was made an elected officer of
12 the State, the office of Treasurer was made one to be
13 appointed by the two Houses of the Legislature.

14 Here we find action on the part of the Con-
15 stitutional Conventions of 1851 and 1867 to establish a
16 system of checks and balances, with the Comptroller re-
17 sponsible to the people who form the electorate and the
18 Treasurer to the General Assembly. We believe that the
19 drafters of the 1851 and 1867 Constitutions acted wisely
20 in establishing these checks and balances. We believe
21 that it was important in 1851 and 1867, and we feel that

1 it is even more important today. We do not feel that
2 the Governor should be given the power to appoint the
3 Comptroller for, in so doing, the system of checks and
4 balances we now have could be destroyed.

5 The person who runs for Comptroller today is
6 aspiring to a most important office and, in so doing, he
7 subjects himself to the close scrutiny of the voters.
8 Thus, one who is elected Comptroller today must have a
9 great degree of capability and fiscal responsibility and,
10 above all, he must devote all of his time to the job if
11 he is to be successful and meet the approval of those
12 who elected him to the office.

13 An appointee of the Governor may not meet these
14 qualifications and the office could revert to one where
15 the appointee was the Comptroller in name only, with
16 policies and decisions handed down to him by the Chief
17 Executive in power.

18 Over the years, the duties of the Comptroller
19 have greatly increased over those as originally set forth
20 in Article 6, and now encompass the collection of the
21 major portion of the State's tax revenue. This assignment,

1 plus many others, by the Legislature to the Comptroller
2 shows their confidence in the present system.

3 Before we leave today, I have a summary I can
4 refer you to, the different jobs the Comptroller has
5 under the Constitution and the Code. Let's take the
6 Board of Public Works, under Article 78 (a) of the Code.

7 The Comptroller is a member of the Board of
8 Public Works, the other two members being the Governor
9 and the State Treasurer. This Board exercises supervision
10 over all public works. It acquires land for public use,
11 awards contracts, sells State bonds, and performs other
12 functions necessary to the operation of the State. As
13 you can see, grave responsibilities are placed on the
14 Board of Public Works, which is composed of three inde-
15 pendently elected officials, with the Governor and the
16 Comptroller being directly responsible to the people, and
17 the Treasurer to the Legislature. If the Governor is
18 to appoint both of these officials, the Board of Public
19 Works will be emasculated as an effective policy making
20 body, since all decisions will be those of one man, the
21 Governor.

1 The Board of Revenue Estimates consists of
2 the Budget Director, an appointee of the Governor; the
3 State Treasurer, who is elected by the Legislature; and
4 the Comptroller, who is elected by the people. This
5 Board is responsible for the estimating of the State's
6 Revenues, in accordance with Article 41, Section 194, of
7 the Annotated Code of Maryland, 1957 Edition. This Board
8 acts as an independent body and its estimates are made
9 without reference to the budget requirements for the next
10 fiscal year.

11 Under our present Constitution, Maryland must
12 have a balanced budget and this provision should be con-
13 tinued in the new Constitution, as it has proved sound
14 for the past fifty years and has kept the State in sound
15 financial condition. It would appear obvious that a
16 Board of Revenue Estimates, with an independent system of
17 revenue estimating, will be necessary under any Constitu-
18 tion, but the only way independent estimates can be made
19 is to have people on the Board who are free to exercise
20 their own independent judgment and not be influenced by
21 the budgetary requirements.

1 (Discussion off the record.)

2 Experience has shown that had the Board of
3 Revenue Estimates not exercised independent judgment in
4 the past in the formation of realistic estimates, deficits
5 would have resulted, and the State would have found
6 itself in financial difficulties. As a result of realis-
7 tic revenue estimates, it has been necessary for the
8 Chief Executive at times to face up promptly to the need
9 for new tax sources in order to present a balanced budget.

10 (Discussion off the record.)

11 A Governor running for reelection might be
12 tempted, with a controlled Board of Revenue Estimates, to
13 hold off a tax increase by balancing his budget on paper,
14 which might result in a deficit for the next administra-
15 tion.

16 The incumbent Comptroller is Chairman of the
17 Board of Trustees of the State Employees' Retirement System,
18 Vice-Chairman of the Board of Trustees of the State
19 Teachers' Retirement System, and a member of the Board of
20 Trustees of the State Police Retirement System.

21 These systems administer the retirement funds

1 and pension funds of State employees, teachers and police.
2 These funds, which now total approximately \$460,000,000.00,
3 represent contributions from the salaries of dedicated
4 State employees, with matching funds from the State, and
5 must be held safe and secure. The incumbent Comptroller
6 has instituted a diversified program for the investment
7 of these funds, in F.H.A. mortgages, ground rents, cor-
8 porate bonds, common stock, et cetera, which investments
9 are now yielding 4.3 per cent interest.

10 When I became Comptroller, it was a little
11 over 2.58 earning. It is important that a person of in-
12 dependent judgment be a member of these Retirement Boards
13 in order that the Retirement Systems of our State may
14 continue to remain in sound financial condition.

15 Upon the assumption of office, the incumbent
16 Comptroller adopted an "open door" policy with respect to
17 financial information. He has kept the public fully
18 informed as to the financial affairs of the State. Under
19 an appointed Comptroller, it is possible that certain
20 financial information could be withheld if such informa-
21 tion might be embarrassing to the Governor. Past experience

1 has proven that the Comptroller has released to the people
2 of Maryland financial information beneficial to them.

3 (Discussion off the record.)

4 We see no necessity for giving the Governor
5 full control over the fiscal affairs of the State. As a
6 matter of fact, to do so necessarily presupposes a high
7 degree of fiscal responsibility in candidates for Governor
8 and we all know that such is not always the case. If
9 the Governor is free to act in fiscal matters without
10 any person otherwise responsible to the public acting in
11 the capacity of a fiscal watchdog, an irresponsible
12 Governor in one term of office could place the State in
13 an adverse financial position from which it might take
14 many years to recover.

15 It seems to me that there is a necessity for
16 a system of checks and balances within the Executive
17 Branch of government and that the present system should
18 be continued, with an elected Comptroller.

19 I would like to add to this statement, during
20 the past forty-five years, Maryland has had four elected
21 State Comptrollers.

The government of Maryland has prospered and met the challenge of the expanding population from rural to urban.

The growth of the budget from 1922 when it was	\$14,159.925.
1931	27,154.398.
1935	32,652,068.
1939	36,729.512.
1951	143,307,308.
1967 approx.	885,000,000.

And we now anticipate a billion dollar budget for the Fiscal Year 1968.

The following served as State Comptroller:

1922-1939	William A. Gordy (worked with two Governors) Albert C. Ritchie 13 yrs. Harry Nice 4 yrs.
1939-1947	J. Millard Tawes Gov. Herbert R. O'Connor 8 yrs.
1947-1950	James J. Lacy William Preston Lane 3½ yrs.
1950-1959	J. Millard Tawes William Preston Lane ½ yr. Theodore R. McKeldin 8 yrs.
1959 to date	Louis L. Goldstein Gov. J. Millard Tawes 8 yrs.

In 67 years Maryland has had only five men who have served as State Treasurers:

1	Murray Vandiver	Feb. 1900 to Feb. 1916
2	John M. Dennis	Feb. 1916 to Feb. 1918
3	William P. Jackson	Feb. 1918 to Feb. 1920
4	John M. Dennis	Feb. 1920 to Jan. 1935
5	Hooper S. Milles	Jan. 1935 to 1963
6	John A. Luetkemeyer	Jan. 1963 to present

One point I would like to make is this.

Maryland has had two Republican Governors since 1922 to the present time, and we have a third Republican Governor, Mr. Agnew, January 25, when that rolls around, and if you will refer to the financial papers I have given you, I have given you a detailed breakdown of the fiscal year '68 budget. That is in the green folder, it goes through 1967, showing you the growth in General, Special and Federal funds. The last year of Governor McKeldin's budget, which is F.Y. '65, there were \$355,375,994, and the budget of Governor Tawes, now operating, round figures, \$885 million. You have the prior budgets. There has never been an impairment of the government. The people's interest have been served, the finances of Maryland have been sound, our bonds rate Triple A, highest rate of any State in the Union, a ready market for them, and we are meeting the challenges. I feel the system has worked,

1 based on the information I have given you here this morn-
2 ing. It is a sound system and why change it because
3 somebody may have a theory that somebody else's may work
4 better?

5 I will be very happy to answer any questions up
6 to this point of the presentation that you all may have.

7 THE CHAIRMAN: The gentleman that came in
8 is Mr. Philip Sayre.

9 MR. GOLDSTEIN: I know, from Montgomery
10 Commission.

11 THE CHAIRMAN: He is a Member of our Commis-
12 sion. I didn't know that you knew him. He is a very
13 distinguished Member of our Commission.

14 MR. GOLDSTEIN: About the open door policy of
15 information, this 8-page report comprises all of the in-
16 formation that would normally be in the Comptroller's
17 Report; here is the Annual Report we have to put out to
18 the Members of the Legislature. It is a very voluminous
19 document of almost 175 pages. Here we have condensed
20 it into eight pages. We sent out 15,000 copies of these
21 to accountants, lawyers, insurance companies, everybody

1 who is in the financial world. They look on the back
2 page, and in five minutes they can get the soundness of
3 our bonds. This has been accepted by the best people in
4 State finance in the country. We have a one-page report
5 which we mail out to every income taxpayer. We now have
6 approximately 1,200,000 people. It shows where the
7 money came from, where it went, the State funded debt
8 account, our administrative officers, and the Office of
9 the State Comptroller.

10 All these things have helped to give confidence
11 in the finances of the State of Maryland.

12 THE CHAIRMAN: Louie --

13 MR. GOLDSTEIN: I will be glad to answer any
14 questions you may have.

15 THE CHAIRMAN: -- what you are saying is, in
16 your judgment there should be a Chief Financial Officer
17 of the State, who should be elected by the people?

18 MR. GOLDSTEIN: Absolutely, and accountable
19 to the people.

20 THE CHAIRMAN: And accountable to the people,
21 Now, just for the sake of pointing this up, it is felt

1 in some quarters that the finances of the State, or of a
2 government, is an integral part of the job of the Chief
3 Executive; that it is his job to recommend sources of
4 revenues and supervise the collection of those revenues,
5 as for example, we have in the Federal government, where
6 the President's obligations are these, and it is there-
7 fore felt that to the extent that you have another, a
8 constitutional officer who takes a part of these duties,
9 you are diluting by that much the duties and powers of
10 the Chief Executive of the State. I take it that is
11 exactly what you are advocating?

12 MR. GOLDSTEIN: Well, it has worked. In other
13 words, we take the most recent times, when Maryland
14 reaches its greatest pinnacle of growth. You can start
15 in the last ten years, start in '58, or start back in
16 1922, and each year our budget has grown. The population
17 has grown. Our greatest population growth in Maryland
18 has been since 1950, when we had approximately 2,300,000
19 people in Maryland. This morning we have approximately
20 3,650,000 people. We are growing by 125,000 a year right
21 now. Most of that growth is in your two big urban areas,

1 Baltimore, Montgomery, Prince Georges area.

2 THE CHAIRMAN: Let me ask you this, Louie:
3 If we can admit then for the purposes of our discussion
4 here that what you are saying is that there should be
5 another check and balance to make a good, well-rounded
6 government --

7 MR. GOLDSTEIN: Absolutely --

8 THE CHAIRMAN: -- how many other States, and
9 I know you are very familiar with the Comptrollers of
10 all the States, how many other States adopt a policy some-
11 what similar to this?

12 MR. GOLDSTEIN: The biggest majority of them.
13 That is the reason I brought this publication. This is
14 the last publication that gives the elected officials of
15 the majority of the States. They had elections in 1966.
16 There will be a new publication coming out in January.
17 If you go through the Council of State Governments pub-
18 lication, you will find an Office of Comptroller or one
19 that is similar. Let's take our big States of California,
20 the biggest State in the Union. They elect their Comp-
21 troller. Take the State of New York; New York has had

1 a unique experience. During the last eight years, you
2 have had the distinguished Governor Rockefeller, who
3 has had an elected Attorney General, Lefkowitz, and an
4 elected Comptroller, Arthur Levy a good friend of mine.
5 In California, you have had a Democrat, Governor Brown.
6 In eight years you had Allan Cranston, State Comptroller,
7 and Bert Betz as State Treasurer.

8 THE CHAIRMAN: Is the Comptroller elected in
9 California?

10 MR. GOLDSTEIN: Yes, sir.

11 THE CHAIRMAN: And in New York?

12 MR. GOLDSTEIN: And in New York, the two big-
13 gest States. California elected not only the Governor,
14 Lieutenant-Governor, Secretary of State, Attorney General,
15 Treasurer and Comptroller, Superintendent of Public In-
16 struction, and a Board of Equalization, consisting of four
17 members. In New York, they elect the Governor, Attorney
18 General and the State Comptroller.

19 MR. ENEY: Do those two States have executive
20 budgets, do you know?

21 MR. GOLDSTEIN: As far as I know, they do.

1 THE CHAIRMAN: What has been your reaction at
2 the various meetings you have attended outside of Mary-
3 land with respect to our program? I am sure you have
4 discussed it with some of your colleagues throughout the
5 country.

6 MR. GOLDSTEIN: I have, and we have, our next
7 National Conference will be held in Clearwater, Florida,
8 beginning on November 27. I am the Fourth Vice-President
9 of that organization. We have a Comptrollers' section,
10 as well as a Treasurers' section and Auditors' section.
11 That has been discussed several times, and the consensus
12 of opinion has been that elected Comptrollers respon-
13 sible to the people is one of the best checks that you
14 have on the executive type budget. It should be that
15 way today, where your government is getting so big, grow-
16 ing so fast. A governor is a busy man. The Governor
17 today is not only a governor of the State, but he is
18 really a public relations man for the State. In order to
19 go out here and attract industry, competing with other
20 States and to go around and create the goodwill, a governor
21 is on the go night and day, making talks, visiting other

1 States, visiting Washington, trying to keep good personal
2 relations between the State and Federal government. He
3 doesn't have much time to watch the State Treasury, be-
4 lieve me. I have had the experience now with several
5 governors, and they have been good governors. I know how
6 busy they are. I have represented them several times
7 in interstate matters. You have to have somebody there
8 to give this job full time.

9 THE CHAIRMAN: Of course, Louis, isn't one of
10 the answers to those who would suggest that all of the
11 financial matters be directly in the hands of the Presi-
12 dent, what they are really doing is looking at the Federal
13 Constitution, which was formed in 1787? Now at that time,
14 taxation and revenue was a small part of governmental
15 function. As a matter of fact, when they tried to put on
16 a tax, they had a war up in Pennsylvania.

17 MR. GOLDSTEIN: The Whiskey Rebellion.

18 THE CHAIRMAN: A full-scale war. They had to
19 get the troops out. Other than perhaps Alexander
20 Hamilton, there were very few people who thought about
21 public revenues in those days, and it would be perfectly

1 consistent not to have a person responsible directly to
2 the people who was a fiscal officer in that type of
3 government, because the people weren't thinking in those
4 terms, but today it is totally different. Wouldn't you
5 say that taxation is probably the most important thing
6 that happens to the people, vis-a-vis its government?

7 MR. GOLDSTEIN: I can tell you, I just finished
8 campaigning throughout Maryland in a primary, in a general
9 election. I think the thing that stood me in the best
10 interests of the people is the fact that I took a stand
11 in February of 1964, when I stood up to the Governor
12 and the Maryland Legislature and said a tax increase was
13 not needed. At that time, the people couldn't quite under-
14 stand it. In the two-year interval of time, they gave it
15 a lot of thought. I had person after person come to me
16 and say, Mr. Goldstein, we are with you because of the
17 stand you have taken, and you have proved right. Inde-
18 pendent judgment it was. I feel today, with the cry for all
19 types of services, education, health, highways, recreation,
20 the Welfare programs, and all the services that the people
21 now get themselves geared to, it is more important than

1 ever to have a watchdog and the chief fiscal officer
2 elected by the people.

3 THE CHAIRMAN: Louie, would you take it a
4 step further and suggest that perhaps the Comptroller
5 should be given broader powers in this area than he now
6 has?

7 MR. GOLDSTEIN: Well, I believe under the
8 Maryland Constitution and the Code, powers are very broad.

9 THE CHAIRMAN: What I had in mind was if you
10 were truly a fiscal officer, you could conceive of a
11 situation in which revenue estimates would be his sole
12 responsibility and not the responsibility of the Execu-
13 tive. In other words, if you did that, then the Governor --
14 what happened in '64 couldn't happen, because you would,
15 not you, but the Comptroller would be able to determine
16 the need for revenues through the estimates that he
17 would make, and in fact, the program, of course, follows
18 that determination.

19 MR. HOFF: Couldn't an irresponsible Comptroller
20 then put the Governor over a barrel if he had that sole
21 authority?

1 THE CHAIRMAN: I was sort of leading up to
2 that.

3 MR. GOLDSTEIN: I anticipated that would be
4 brought up. I feel the present system of revenue estimat-
5 ing, we have the Budget Director who represents the
6 Executive, the State Treasurer representing the Legis-
7 lature, and the Comptroller representing the people is a
8 sound approach to it. It has worked. It certainly hasn't
9 impaired our Governor. It hasn't put any obstacles in
10 the path of the Governor in the past, and I certainly
11 won't do it in the future. We have a career man Secre-
12 tary to the Board, in this instance, Irvin Young, a
13 dedicated outstanding State official.

14 THE CHAIRMAN: In the public report of one
15 of the hearings of our Committee, there were some very
16 disparaging things said about the Bureau of Revenue
17 Estimates by a nationally known expert on budget and
18 finance. I hate to tell you what he called them.

19 DR. JENKINS: You have been called worst things,
20 haven't you?

21 THE CHAIRMAN: Mr. Goldstein is not a Member

1 of the Board, not in this Bureau.

2 Well, getting back to this subject --

3 MR. GOLDSTEIN: You can't find a situation
4 where everybody will love you.

5 THE CHAIRMAN: Getting back to the thing our
6 Committee is particularly interested in, Louie, you said
7 you had a sheet there that gave the various duties of
8 the Comptroller and what you did. We would like to have
9 that.

10 MR. GOLDSTEIN: All right.

11 THE CHAIRMAN: Do you think there should be
12 one central place into which flows all State revenues?
13 We don't have this now.

14 MR. GOLDSTEIN: I think it would make a much
15 sounder financial setup, if you had all the monies
16 flowing into one central depository. No question about
17 that.

18 THE CHAIRMAN: In other words, have, in effect,
19 one department of revenue which would collect or would
20 have the obligation of getting all of the revenues.
21 Would this be right?

1 MR. GOLDSTEIN: Take under Article 81, State
2 Comptroller administers the personal and corporate income
3 tax laws. That is through our Income Tax Division; ad-
4 ministrator of the retail sales and use tax through the
5 Sales Tax Division, Amusement Tax Unit. We administer
6 the road tax on motor carriers through the Gasoline Tax
7 Division. We administer the State tobacco tax through
8 the Retail Sales Tax Division. We also collect the
9 State, have supervision over gasoline tax, tax on alco-
10 holic beverages, plus inheritance taxes.

11 THE CHAIRMAN: Mr. Eney and I --

12 MR. NOSSEL: I was going to inquire, I don't
13 know what specifically is meant, Dick. You mean should
14 everything come into the central treasury, or do you mean
15 should the same agency collect all of the revenue?

16 THE CHAIRMAN: The latter.

17 MR. NOSSEL: I don't think that is too feasible,
18 because, take in the case of motor vehicle revenues,
19 registration fees, whatnot, collected by the Department
20 of Motor Vehicles. Now, if you are going to separate that,
21 you are going to separate the licensing function from the

1 collection of revenues. This is not very feasible.
2 The same thing is true with insurance taxes where you have
3 got the regulatory factor involved there, and the collec-
4 tion of taxes is a very small part of this. In other
5 words, you add very little to the duties to collect the
6 tax, but if you separate these now, you are separating
7 the collection of the revenue from the other facets of
8 the thing.

9 MR. ENEY: Isn't that true only with respect
10 to some form of regulatory tax?

11 MR. NOSSEL: Certain forms, yes. I think most
12 of those which can be feasibly collected centrally are
13 today. I don't know of any major one. There is a lot
14 of minor stuff lying around.

15 THE CHAIRMAN: How about the gross receipts
16 tax on public utilities? That is collected by the State
17 Department of Assessments and Taxation, isn't it?

18 MR. NOSSEL: No, that is collected by us on
19 certification from them. They do collect certain fran-
20 chise taxes. This could be very well brought together.

21 THE CHAIRMAN: That is a matter of statutory

1 reform, isn't it? You really don't have to go to the
2 Constitution for that.

3 MR. NOSSEL: No. It is quite feasible to bring
4 that together. In the specialized areas such as motor
5 vehicles and insurance, I don't think it is too feasible.
6 I think you are really going to increase the cost of
7 government.

8 THE CHAIRMAN: You collect for the gasoline
9 tax?

10 MR. NOSSEL: That is right. That is collected
11 completely from different sources.

12 THE CHAIRMAN: You also collect the titling
13 tax?

14 MR. NOSSEL: No, Department of Motor Vehicles
15 does. If we collected the titling tax, you would
16 separate that from the actual issuance of the title.
17 Presently it is simpler from the point of view of the
18 public to get title and pay the tax at one time than it
19 would be to go through two separate transactions. The
20 same thing with the license. You get your license and
21 pay for it.

1 THE CHAIRMAN: Don't they certify and pay over
2 to the Comptroller's Office the titling tax?

3 MR. NOSSEL: Everything they collect now is
4 deposited directly into the Treasury, and the report of
5 it comes to us.

6 THE CHAIRMAN: I know. We have got a full
7 four pages of the various State funds and how they flow.
8 We know they come into the Treasury as such, but they
9 don't come through this office into the Treasury. I am
10 talking about titling taxes. They go directly from the
11 Department of Motor Vehicles to the Treasurer's office.

12 MR. NOSSEL: The funds do. In other words,
13 the certain call of deposit basis; from an agency that
14 is collecting State funds deposits it into a bank in the
15 name of the Treasurer, and they send^a/duplicate copy of
16 this to the Treasurer and a triplicate to the Comptroller
17 along with the report. We record this on the books and
18 the Treasurer actually has the money in the Treasury at
19 that time.

20 THE CHAIRMAN: That is required by the Consti-
21 tution. The Constitution, in effect, says that all

1 State monies shall be paid directly to the Treasurer.

2 MR. NOSSEL: Yes.

3 THE CHAIRMAN: Is this an important thing?
4 Should that be continued?

5 MR. SAYRE: Constitutionally, you mean?

6 THE CHAIRMAN: Constitutionally, right.

7 MR. NOSSEL: I think you have to be a little
8 careful there. I am not familiar with the present
9 language particularly. If it is interpreted as meaning
10 that it can be collected at the appropriate time and
11 place, and deposited in the Treasury, this is all right.
12 This is good. It is workable. But if the language is
13 such that it would be interpreted as saying that it
14 actually has to be paid by the taxpayer, or the payer of
15 the fee directly to the Treasurer, then it is not good.

16 THE CHAIRMAN: What it says is, the Treasurer --

17 MR. NOSSEL: Speaking of new language. I
18 know the present one is all right.

19 THE CHAIRMAN: -- shall receive the monies of
20 the State until otherwise prescribed by law, deposit
21 them as soon as received to the credit of the State, in

1 such bank or banks as he may from time to time with the
2 approval of the Governor select.

3 MR. NOSSEL: That is right.

4 THE CHAIRMAN: My question is, should that be
5 there at all in the Constitution?

6 MR. NOSSEL: I think the provision as it
7 exists today is a good sound one. If you don't have
8 this in the Constitution, then you can get some radical
9 changes in the thing, where the money would be held by
10 agencies and expended by them for specific purposes.
11 You could have statutes that would so fragmentize the
12 State revenues that you really wouldn't know what you
13 were collecting.

14 MR. ENEY: Let me break in. I am puzzled.
15 Aren't collections by the registers and the clerks
16 deposited by them and then accounted for periodically with
17 the Treasurer?

18 MR. NOSSEL: Yes, they are; on a monthly basis.
19 They could. There is no reason why they couldn't be
20 deposited into the Treasury and disbursed from it when
21 distribution is made.

1 MR. ENEY: So that you get a situation like
2 death taxes. The inheritance tax goes to the Register's
3 general fund, and you pick up excess over expenses, or
4 the Treasurer picks it up?

5 MR. NOSSEL: No. We pick up 75 per cent on
6 a monthly basis from the Register of Wills.

7 THE CHAIRMAN: Of the estate tax?

8 MR. NOSSEL: Of the inheritance tax. He
9 doesn't collect the estate tax. He retains 25 per cent
10 by law as a commission and out of this 25 per cent, plus
11 the fees he collects for the various services he renders,
12 he operates his office. At the end of the year he
13 reports to us, showing his collections in the form of
14 fees and commissions, the cost of operating his office
15 and pays over the difference to us, which is picked up
16 as excess fees of office.

17 MR. ENEY: That is the way the clerks of court
18 work.

19 MR. NOSSEL: Clerks of court work the same
20 way. In the case of registers, all the fees they collect
21 come to the State. In the case of clerks, they collect

1 funds for the Counties, for the municipalities within
2 the Counties, for special taxing districts. It is a
3 real hodgepodge.

4 MR. SAYRE: There is no reason for that pro-
5 cedure to be necessarily continued, is there?

6 MR. NOSSEL: Which procedure is that, the
7 clerk?

8 MR. SAYRE: That it could go directly to the
9 Treasury?

10 MR. NOSSEL: It could go directly to the
11 Treasury, even in the case of the collection situation,
12 because the clerk, after all, is a State officer. Now,
13 all his collections could be deposited into the Treasury
14 and distributed from the Treasury to the appropriate
15 local subdivision. This could be done.

16 MR. SAYRE: If you have an annual budget
17 based upon past experience, then you could operate that
18 way, couldn't you?

19 MR. NOSSEL: You have to recognize that the
20 clerks and the registers are not in the budget.

21 MR. SAYRE: Not now. If we took that out.

1 MR. NOSSEL: It could work. The only dis-
2 tinction you have to make is the kind of monies they
3 collect which are under the jurisdiction of the courts;
4 the land acquisition accounts, the litigants' funds,
5 this sort of thing.

6 THE CHAIRMAN: Those are special funds and
7 special accounts.

8 MR. GOLDSTEIN: They never come into the
9 Treasury. They are held by the clerk. They really don't
10 belong to the State. They belong to either known or un-
11 known people who are going to collect them upon some
12 contingency situation arising.

13 THE CHAIRMAN: Bernie, there are a number of
14 agencies, are there not, that in effect, do the same
15 thing? They collect special fees, pay the expenses of
16 their operations, and then remit the balance to the State
17 at the end of the year?

18 MR. NOSSEL: This is a hodgepodge in the case of
19 examining boards.

20 THE CHAIRMAN: Like hairdressers, et cetera?

21 MR. NOSSEL: If the statutory language is a

1 certain way, they have the legal right to hold onto these
2 funds. While they may be in the Treasury, they are still
3 dedicated for this purpose, and they cannot be reverted.
4 In other cases, they will go into the Treasury, and what
5 is unexpended at the end of the year reverts to the gen-
6 eral funds of the State. It is a hodgepodge. It depends
7 on possibly inadvertent language in the statutes.

8 DR. JENKINS: Mr. Chairman, with your permis-
9 sion, I will have to leave here in about five minutes.

10 THE CHAIRMAN: You always have my permission
11 to come and go.

12 DR. JENKINS: I am a dedicated public servant,
13 and I have to work, you know. I would like to ask Mr.
14 Goldstein a question after you have finished this.

15 THE CHAIRMAN: You go ahead.

16 DR. JENKINS: Your opinion about the present
17 procedure for electing the Treasurer, should this be
18 changed or retained?

19 MR. GOLDSTEIN: Personally, I would like to see
20 the Treasurer elected by the people, if you want my honest
21 approach to the proposition, and write the qualifications

1 in the law, the kind of man you want for State Treasurer.

2 DR. JENKINS: There should be a constitutional
3 provision, in your opinion?

4 MR. GOLDSTEIN: Yes, sir.

5 THE CHAIRMAN: Following up Dr. Jenkins' ques-
6 tion, what would you think of having the duties of the
7 State Treasurer combined with those of the Comptroller,
8 leaving out names?

9 MR. GOLDSTEIN: We are not talking about indi-
10 viduals?

11 THE CHAIRMAN: I am not even talking about a
12 title such as the word, Comptroller, or the word, Treas-
13 urer, but things in terms of a broad constitutional
14 officer who would be the Chief Fiscal Officer. He could
15 do the work of the Treasurer. He wouldn't need another
16 person to handle that. You could set up a department
17 in this office to do this and go right along, could you
18 not?

19 MR. GOLDSTEIN: The thing is, you still have
20 the checks and balances.

21 THE CHAIRMAN: I mean, you get enough checks

1 and balances. You will never get off dead center.

2 MR. GOLDSTEIN: Three top people give you
3 checks and balances, Governor, State Treasurer and State
4 Comptroller.

5 MR. ENEY: The Treasurer has to account to the
6 Comptroller now in some respect, does he not?

7 MR. GOLDSTEIN: That is right, we check back
8 and forth. One checks the other.

9 MR. NOSSEL: There is agreement as to the
10 amount of money in the banks and on the books. This is
11 done on a daily basis.

12 MR. ENEY: I didn't mean that. I thought there
13 was provision in the present Constitution that says the
14 Treasurer has to render a report, annually, semiannually.

15 MR. NOSSEL: I think there is, semiannually.
16 I think it says six months, but actually it is done on a
17 daily basis. That is what they mean, that you are in
18 balance between the two, by that provision that you refer
19 to.

20 MR. ENEY: Following up Dick's question, be-
21 cause the same thing was in my mind and also Martin

1 Jenkins, the State Treasurer is not a full time job and
2 hasn't been as long as I can remember. It has been a
3 banker.

4 MR. GOLDSTEIN: I think the present State
5 Treasurer, in order to devote intelligently the time to
6 the Public Works meetings today, you have to go out here
7 and look around and know what is going on in this State.
8 You are buying land costing several thousand dollars an
9 acre, awarding contracts on buildings, several millions of
10 dollars. He serves on the Retirement Boards along with
11 the State Comptroller. Right now, we have over \$460
12 million to keep invested. It is a big job with a lot of
13 responsibility.

14 MR. ENEY: Still thinking of Dick's question
15 and not thinking of the title, call him Chief Fiscal
16 Officer, the fiscal part of it, administration of the
17 funds could really be effectively handled by one official?

18 MR. GOLDSTEIN: No question.

19 MR. ENEY: Even though you^{may} want to have a third
20 man to serve on the Board of Public Works, he doesn't
21 necessarily have to be part of the fiscal setup of the

1 State government, does he?

2 MR. GOLDSTEIN: He wouldn't have to be.

3 THE CHAIRMAN: It might even be better if he
4 were a lawyer, mightn't it? You would have the Governor,
5 the Chief Fiscal man and a legal man.

6 MR. ENEY: Attorney General, for instance?

7 MR. GOLDSTEIN: Yes.

8 THE CHAIRMAN: Thinking in abstract terms.

9 MR. GOLDSTEIN: I think the fact you have
10 three people serving on the Board of Public Works, three
11 people who are responsible, have a complete knowledge
12 of what goes on in this State, who can sit there and
13 make decisions, and you have got to make big decisions
14 and make many of them.

15 MR. ENEY: That differs from the fiscal respon-
16 sibility, but thinking in terms only of the fiscal respon-
17 sibility for the moment, is there any reason why this
18 can't be concentrated in one Chief Fiscal Officer, what-
19 ever name you might want to tack onto him, if he were an
20 elected official?

21 MR. GOLDSTEIN: I don't see any reason why he

1 couldn't be.

2 MR. MINDEL: How many States have both Treas-
3 urers and Comptrollers?

4 MR. SAYRE: Or Secretaries of State?

5 MR. NOSSEL: Let me answer sort of in general
6 terms. I think virtually every State has a Treasurer
7 by title now. A lot of States do not have a Comptroller
8 by title. In some cases, this is called an Auditor
9 General, or some other title. In some States, the func-
10 tions performed by both the Comptroller and Treasurer
11 in Maryland are performed just by the Treasurer in some
12 States. The title itself is misleading. It doesn't
13 tell you what the job does. Some places, the function
14 that is performed by the Comptroller in Maryland is per-
15 formed by a man called an Auditor General, and in some
16 cases, by a man called a Treasurer. The title can be
17 very, very misleading, if you look just at a list of
18 State officials without knowing what their duties are.
19 In Kansas, for example, which is definitely an exception,
20 the State Comptroller is a merit system person. He is
21 neither elected nor appointed. In most States, he is

1 either elected or appointed.

2 You have to recognize also that in Maryland,
3 the situation is rather unique in that in no other State,
4 except Texas, is the Comptroller the revenue collector.
5 In these other States, he is the person who maintains
6 the accounts of the State and has other functions. In
7 some cases he has purchasing and budgeting, et cetera,
8 under him but in no case, with the exception of Texas
9 and Maryland, do you have the Comptroller as the revenue
10 collector. In most States, you have a Department of
11 Revenue or Department of Taxation, which performs that
12 function, which is separated from the other fiscal func-
13 tions.

14 MR. NOSSEL: It is difficult to answer the
15 question when posed in the office as a title.

16 MR. ENEY: This leads to what you asked earlier,
17 Dick, and I think we had some comment on. Most of the
18 tax collecting functions presently invested in the
19 Department of Comptroller are vested by statute, not by
20 the Constitution.

21 MR. GOLDSTEIN: That is right.

1 MR. ENEY: As I think Dick started to mention,
2 he and I, for many years, as you know, have been advocating
3 that all purely tax collecting functions ought to be in
4 one body or one official so that you could get some system
5 of checking one against the other. This is partly done,
6 certainly it is a whole lot more than it was 25 or 30
7 years ago. I take it from what you say that you would
8 feel that the Comptroller, or the Chief Fiscal Officer,
9 by whatever title he is known, even if he had known of
10 the purely tax collecting functions, if these were put in
11 a separate board or department, you would still feel that
12 the Chief Fiscal Officer, if his duties were just those of
13 what they were 30 years ago should still be an elected
14 official, independent of the Governor?

15 MR. GOLDSTEIN: Absolutely.

16 MR. ENEY: So you don't tie that in in any way
17 to the tax collecting function?

18 MR. GOLDSTEIN: The fact you had the tax col-
19 lecting function in the Comptroller's Office and you had
20 access to these top people, it makes your job of revenue
21 estimating much easier because you are in contact with

1 them daily. I am in contact with Ben Morris, Englebert,
2 people who handle the general funds every day.

3 MR. ENEY: Even though they account to you like
4 clerks of the court do now, the general impression I had
5 was that your chief reason for saying that the Comptroller
6 ought to be, or the Chief Fiscal Officer ought to be
7 independent, and elected is not because he is the tax
8 collecting officer, but because he is a member of the
9 Board of Revenue Estimates, and he is a member of the
10 Board of Public Works?

11 MR. GOLDSTEIN: That is right.

12 MR. ENEY: He does have the power to supervise
13 the other revenue collecting functions?

14 MR. GOLDSTEIN: That is right. He is the voice
15 of the people. He represents the people.

16 THE CHAIRMAN: Along that same line, Louie,
17 and this is really not meant to be a loaded question,
18 and if you don't want to answer it, quite all right, but
19 a lot of times, in theory at least it is said that the
20 collector of revenues should not be an elected official,
21 because it exposes him, and therefore, the system to undue

1 political influence.

2 Now, would you care to comment on that? Do
3 you see what I am talking about?

4 DR. JENKINS: Mr. Chairman, may I be excused?

5 THE CHAIRMAN: I am sorry you have to go.

6 DR. JENKINS: Mr. Goldstein, it is always
7 a pleasure to be in your company in your office.

8 MR. GOLDSTEIN: Thank you, Doctor.

9 THE CHAIRMAN: Just to follow that up, we
10 have had that battle in the State for a long time. Years
11 ago, of course, all the assessors were appointed by the
12 County Commissioners, and there was all kind of charges
13 of favoritism in the assessment of real estate; through
14 a long series of reports that Mr. Eney and I have worked on
15 over the years, along with a lot of other people, of
16 course, gradually we have gotten the State Department of
17 Assessments and Taxation established, and it now appoints
18 the assessors; and I think it can fairly be said that
19 politics is pretty much out of the business of assessing
20 locally real estate and during all of this fight, there
21 was always the argument that international association

1 with politics and people who have to collect taxes neces-
2 sarily requires pressures to be brought, or results in
3 pressures being brought, and in the overall is not in
4 the public good.

5 MR. GOLDSTEIN: I don't think that holds true
6 in your office, because the top tax collection officials
7 are merit system employees, and have had long tenure.

8 THE CHAIRMAN: That is true, but following it
9 up, isn't it possible to conclude that since you are the
10 Comptroller, or "X" is the Comptroller, again let's not
11 personalize it, "X" is going to be able to exert some
12 influence on his department heads in a given case, if he
13 feels like doing it?

14 MR. GOLDSTEIN: I don't know of any instances.

15 THE CHAIRMAN: I understand that, Louie. I
16 know that you have not done it and wouldn't do it, but
17 isn't it possible that it could be done?

18 MR. GOLDSTEIN: Anything is possible, if you
19 have got weak people.

20 MR. ENEY: Not necessarily weak people. Sup-
21 pose you had right now instead of what you do have,

1 suppose you had a Democrat governor-elect and a Democratic
2 Attorney General-elect, but a Republican Comptroller-
3 elect. With the vast number of people employed in the
4 tax collecting functions, wouldn't this give an oppor-
5 tunity for an ambitious Comptroller, member of the
6 minority party to build up a political machine by means
7 of appointments, even the merit system employees in these
8 various cases?

9 MR. GOLDSTEIN: No, sir. Under our merit sys-
10 tem, they take an examination and are qualified. The
11 list is certified to the Director of Hiring Personnel
12 downstairs or upstairs in this case.

13 MR. ENEY: Would there be a pressure on such
14 official to try to get as many Republicans appointed to
15 the Income Tax Department or the Sales Tax Department or
16 whatnot?

17 MR. GOLDSTEIN: All I can tell you is based on
18 experience. We don't hire people based on religion,
19 politics, what strata of society they belong to, but on
20 their ability to do the job, regardless of race, creed,
21 or color or national origin.

1 MR. ENEY: Do you think that would be true
2 if the Comptroller were not Louie Goldstein?

3 MR. GOLDSTEIN: It was true with Mr. Gordy
4 back in '22, Mr. Tawes and Mr. Lacy.

5 MR. ENEY: You didn't have these functions
6 when Mr. Gordy was Comptroller. You didn't have the
7 income tax function and sales tax function.

8 MR. GOLDSTEIN: During Governor Tawes' adminis-
9 tration, most of his people were not under the merit
10 system.

11 MR. NOSSEL: The tax divisions were created by
12 and large in 1935, which was during Mr. Gordy's term.

13 MR. ENEY: The first income tax account was
14 '37, and it really didn't get going until '59.

15 MR. NOSSEL: You had gross receipts tax and the
16 alcoholic beverages, et cetera, which came in in about
17 1934. Of course, you had the gasoline tax, which came
18 in in 1922 but was formed in '29.

19 MR. ENEY: I was thinking of the tax collection
20 functions that employ a lot of people.

21 MR. NOSSEL: In the early days, in the income

1 tax and the alcoholic beverages tax, these were not
2 merit system positions in the earlier stages. They were
3 created, put in the merit system about '49 or '50, and
4 since that time, of course, the appointments have been
5 made as a result of examinations. The problem today is
6 not to get persons who are Democrats or Republicans but
7 to get persons, period. I mean, we have something like
8 80-some vacancies in the Department right now simply
9 because the economics of the situation -- economics and
10 other factors, for example, the shortage of qualified
11 people in virtually any field, professional or quasi-
12 professional. You can't get qualified accountants today.

13 MR. ENEY: Let me make my question more pointed.
14 I was in the Attorney General's Office in '38 and '39. I
15 wrote the '39 income tax, which was after the temporary
16 copy of the Kentucky statute. I have always had in
17 mind, and it was certainly my notion at that time, that
18 the reason why the income tax was put in the Comptroller's
19 Office was that we had a Republican Governor, and a
20 Democratic Comptroller, and this, of course, may have
21 been for the very reason you mentioned.

1 MR. GOLDSTEIN: '39?

2 MR. ENEY: Yes.

3 MR. GOLDSTEIN: '39 we had O'Connor, a Democratic
4 governor.

5 MR. ENEY: He came in in '39; '37 and '38,
6 you had Harry Nice.

7 MR. GOLDSTEIN: That is right.

8 MR. ENEY: They weren't merit system people.
9 That is when the Department was set up.

10 MR. GOLDSTEIN: I was in the Legislature and
11 voted for the income tax in '39. We got rid of the
12 dividend tax.

13 MR. ENEY: As a Member of the Legislature,
14 was that part of the thinking in putting it in the Comp-
15 troller's Office?

16 MR. GOLDSTEIN: Absolutely not.

17 MR. NOSSEL: It might have been in those days,
18 but I think the situation has changed so drastically since
19 then.

20 MR. GOLDSTEIN: Stan and I were in the Legis-
21 lature together.

1 MR. HOFF: We were on the same committee.

2 MR. GOLDSTEIN: We got along fine, didn't we?

3 MR. HOFF: With a few minor arguments.

4 MR. NOSSEL: In reality, I don't think we
5 think today, I don't think the State Departments by and
6 large gave any thought to what the politics of an appli-
7 cant for the job who has passed the examination is.

8 MR. ENEY: It is too hard to get anybody.

9 MR. NOSSEL: Yes.

10 MR. GOLDSTEIN: I am sorry Dr. Jenkins left.
11 Last summer we needed people to work in the computers.
12 I called Dr. Jenkins' office. He put me in touch with
13 his best man. I said, Send me three of your best people.
14 I didn't care about religion or color. He sent me three
15 people. We got in touch all over the State. I am not
16 concerned with religion, politics. We want them to be
17 honest and be qualified.

18 MR. ENEY: Let me ask you another question
19 along the same line.

20 MR. GOLDSTEIN: I think my successor in this
21 office will take the same attitude.

1 MR. ENEY: What do you call this, five or
2 six of your statement? This intrigues me, because looking
3 at it, I see that in 44 years you have had only two
4 Republican governors, or twelve years out of the 44, but
5 that in addition to that, the only one who was not
6 previously either Comptroller or Attorney General was
7 Harry Nice.

8 MR. GOLDSTEIN: That is right.

9 MR. ENEY: He served four years, from '35 to
10 '39, as I remember. Would you care to comment on that
11 fact in connection with your views, that the Comptroller
12 should be an elected official and perhaps also your
13 views, whatever they may be, as to whether the Attorney
14 General should be elected?

15 MR. GOLDSTEIN: Well, I have always been of
16 the opinion, the more elected officials you have in a
17 State government, the more efficient the government is.
18 The elected official is closer to the people. Now, there
19 is an old saying, everybody should be able to choose his
20 lawyer, his legal advisor. Here again, you have had
21 Republican governors, with a Democratic Attorney General.

1 The best example was when Paul Hammond was Attorney
2 General, I believe during --

3 THE CHAIRMAN: The first term --

4 MR. GOLDSTEIN: The first term of the McKeldin
5 administration. He became judge and he appointed his
6 friend up in Cecil County to be Attorney General.

7 THE CHAIRMAN: Nels Rollins.

8 MR. GOLDSTEIN: Mr. Nels Rollins. Mr. Rollins
9 ran against the Democrat. He was defeated. Governor
10 McKeldin was elected. He had a Democratic Attorney
11 General. The Attorney General is not only legal advisor
12 to the Governor, but to the Legislature, Comptroller,
13 State Treasurer and 125 different departments of govern-
14 ment. There may be some reason the Governor should be
15 able to pick his legal advisor. I think it even has a
16 setup similar to that, where the Governor has a special
17 legal counsel. I know Governor McKeldin had a special
18 legal counsel. William Allison was Special Legal Counsel.
19 I know, because when I was President of the Senate during
20 his second term, whenever we went up to sign bills, the
21 Attorney General may have been there, but right to the

1 right of Governor McKeldin was Mr. M. William Allison.
2 He would say, Governor, here is a good or bad bill, and
3 here is the reason you should veto it. I am certain
4 Governor Agnew will have a legal advisor even though he
5 may have a Democratic Attorney General to advise him on
6 many things. He will have no trouble getting a good
7 lawyer to advise him because there are many lawyers
8 seeking to be judges and other things they want. Their
9 time is very valuable. They give it to a Governor without
10 any trouble whatsoever.

11 MR. ENEY: That is not quite what I meant. In
12 the two other instances you mentioned, Governor Ritchie's
13 first time, he had a Republican Attorney General?

14 MR. GOLDSTEIN: Mr. Alexander.

15 THE CHAIRMAN: Alexander Armstrong?

16 MR. GOLDSTEIN: That is right.

17 THE CHAIRMAN: In Governor Nice's he had
18 Herbert O'Connor as his Attorney General?

19 MR. GOLDSTEIN: That is right.

20 MR. ENEY: What I meant was the fact during this
21 whole period of 44 years with one exception only, the

1 Governor had immediately previously been either Comp-
2 troller or Attorney General, and I have heard you comment
3 that you think this is good proving ground, I think was
4 the term you used, for a man to be governor.

5 MR. GOLDSTEIN: That is right. No question
6 about that. The fact you had experience in the Executive
7 Branch or Legal Branch of government, in the Finances,
8 you get a knowledge you can't find anywhere except actually
9 working with it each and every day. I know from the ex-
10 perience I had, 16 years in the Legislature, and during
11 that 16 years, I saw the State budget grow from roughly
12 around \$38 million or \$39 million to a budget of roughly
13 \$450 million, and having had the experience as a floor
14 leader and Chairman of the Finance Committee and having
15 been part of the income tax law, part of the sales tax
16 law, that your good friend and my good friend, Dick Case,
17 wrote, it certainly has made my job much easier as
18 State Comptroller, having the knowledge of these differ-
19 ent divisions and department heads. I believe Mr. Nossel
20 will tell you we have a better working relationship with
21 every department of government today, budget, Treasury,

1 and everything than before in the history of Maryland,
2 is that right?

3 MR. NOSSEL: That is right.

4 MR. GOLDSTEIN: It is like one big family.
5 We don't have quarrels, disagreements. We can sit down
6 in a matter of minutes and resolve any problem. We have
7 a complete confidence in each other which has come about
8 because of years of public service.

9 MR. ENEY: We have never had an elected or any
10 kind of lieutenant-governor. Would your feelings still
11 be the same as to the Attorney General and Comptroller
12 if we were to have a lieutenant-governor?

13 MR. GOLDSTEIN: Yes. He will be the presiding
14 officer.

15 MR. ENEY: Maybe, but we don't know. What I
16 meant, would you still feel the Comptroller and Attorney
17 General positions would be sort of a proving ground for
18 governor even if you had a lieutenant-governor position?

19 MR. GOLDSTEIN: Absolutely. Quite a few
20 States have lieutenant-governors.

21 MR. SACHS: Wouldn't you agree, Mr. Goldstein,

1 I am not suggesting this is a good or bad thing, but
2 that the fact that the Comptroller, and the Attorney
3 General are presently elected, introduces a kind of
4 potential, if not actual political competition between
5 the Attorney General and Comptroller, between them and as
6 to them on the one hand and the Governor on the other,
7 even in the same political party, not to mention opposite
8 political parties? I am not saying that is good or bad,
9 but isn't it a fact there is an element of political
10 competition between these various elected officials, be-
11 cause, I think this carries Mr. Eney's point a little
12 further, because of the very obvious shot at the State
13 House that the elected Comptroller and elected Attorney
14 General by virtue of their positions, being in the public
15 eye, would have.

16 MR. GOLDSTEIN: I see no evidence of that.
17 Let's assume what you say would be right. The fact that
18 they are public officials elected means they have to go
19 out day by day and do a good job because of public
20 scrutiny. The people in Maryland know what goes on.
21 Through newspapers, TV, they watch everything you do in

1 the State. I am glad they do. They are under public
2 scrutiny, the eye of the public. The public is the
3 watchdog. They know what goes on in the public. Years
4 ago when you had remoteness, people living in rural areas
5 and the fact people had to travel a long way to get to
6 Annapolis to see a governor or State official, it was a
7 different story, but today in a matter of 45 minutes,
8 do you realize that 90 per cent of the people have access
9 to Annapolis, 45 minutes, with two Beltways? That is hard
10 to believe, isn't it? In 45 minutes people, 90 per cent
11 of the people of Maryland can be in the State House in
12 Annapolis.

13 MR. BROOKS: Mr. Chairman, two questions.
14 Mr. Goldstein, it has been contended by a number of per-
15 sons appearing before the Commission that the checks and
16 balances that should be considered might better be between
17 the branches of government than between individual elected
18 officials, suggesting that perhaps if there is an indepen-
19 dent person who should be a check on the governor, that he
20 should be a legislative officer, such as the Treasurer or
21 someone and maybe even the Auditor, the post-audit function

1 should itself be a function of the General Assembly rather
2 than a function of the Executive Branch. I wonder if
3 you would comment on that.

4 The second question --

5 MR. GOLDSTEIN: Let's take one at a time. You
6 are Mr. Brooks, are you not?

7 MR. BROOKS: That is right.

8 MR. GOLDSTEIN: Mr. Brooks, some States have
9 that, but they still have elected Comptroller. I think
10 Louisiana has that system you are talking about. The
11 Legislature elects the Auditor and he in turn checks on
12 the governor's expenditures. They still have the elected
13 Comptroller. The fact is, here in Maryland we have had
14 this system. It has worked. The State is a very progres-
15 sive State. Naturally, we have to change with the times,
16 to meet the challenge of the '60's. The 21st Century
17 will soon be here. Here are the facts on paper showing
18 a fantastic growth from a \$14 million budget to a budget
19 of this year \$1 billion. We haven't had any scandals.
20 Money has been safe. The money has been expended in the
21 proper fashion, to give the people the services. Our

1 educational systems are expanding. Let's take the
2 University of Maryland alone. Mr. Case is one of the
3 outstanding members of the Board of Regents. In one
4 institution we have a budget exceeding \$113 million.
5 You add up your Federal, State, General and Special funds.

6 MR. ENEY: Lou, I think John Brooks' question
7 was directed to a slightly different situation. If you
8 combined the fiscal function in one person, call him
9 Chief Fiscal Officer, the present Comptroller function,
10 State Treasurer function and auditing function in one
11 official, in your opinion would it be better for that
12 official to be elected by the people or better for him
13 to be elected by the Legislature?

14 MR. GOLDSTEIN: Elected by the people.

15 MR. ENEY: Why?

16 MR. NOSSEL: I would say this one thing, that
17 the Auditor of Maryland has to be a certified public
18 accountant, and I think that is highly important. I
19 think, in many of the States you will find that auditors
20 are elected and this means virtually anyone, and I think
21 when you are going in and examining the day to day

1 operations of any agency, you can always find things to
2 criticize. I don't think that this is categorically
3 true, that there is no such thing as finding everything
4 perfect.

5 Now, if you involve this function of the post-
6 audit into any kind of a political situation, I think
7 you really will get hassling and wrangling in that situa-
8 tion, which is to a large extent avoided today in Maryland,
9 by having the Auditor as a man who is professionally
10 qualified to do the work of any certified public account-
11 ant, as the man responsible for, directly responsible for
12 the immediate auditing practice. You could have some
13 kind of a departmental setup where the Auditor as a
14 separate official would come into a departmental context,
15 but he would have to have independence.

16 MR. ENEY: Lou, tell us why you think the Chief
17 Fiscal Officer, assuming he should be elected, why
18 should he be elected directly by the people instead of
19 the Legislature? Why do you feel it should be the people
20 rather than the Legislature?

21 MR. GOLDSTEIN: Why? I believe I have given you

1 several reasons already here today, unless you want to
2 repeat everything.

3 THE CHAIRMAN: I think he said that it makes
4 the officer closer to the people.

5 MR. GOLDSTEIN: That is right.

6 THE CHAIRMAN: And more responsive to the
7 people and hence more independent of the desires or pres-
8 sures that might be brought to bear upon him, either by
9 the Governor or by legislative leaders.

10 MR. ENEY: It is that second thing that I
11 didn't think you commented on. You think he ought to
12 be just as independent of the Legislature as he is of
13 the Governor?

14 MR. GOLDSTEIN: Absolutely, sir, an indepen-
15 dent person elected by the people. The people scrutinize
16 everything he has done. Every four years you have an
17 election. He doesn't do the job properly. We get rid of
18 him.

19 MR. BROOKS: Let me pursue that with another
20 idea that has been contended and that is a post-audit
21 function perhaps should be contracted for by the General

1 Assembly of independent auditors altogether as a full time
2 State function, that this should be a contract basis. I
3 wonder if you would comment on that idea? I understand
4 it is being discussed in a number of States that are at
5 the present time considering constitutional revisions
6 and having post-audit function on a contract basis.

7 MR. GOLDSTEIN: Independent auditors?

8 MR. ENEY: Certified accountants.

9 MR. NOSSEL: I will put my two cents worth
10 in on this, if you want.

11 MR. GOLDSTEIN: Go ahead, Bernie, you answer
12 that.

13 MR. NOSSEL: I think the State government is
14 quite different from a normal commercial enterprise, and
15 I think that you would get, in the most competent of
16 CPA firms, and there are some very excellent and very
17 competent ones here, an approach to State government, and
18 a lack of knowledge of the intricacies and inner workings
19 of it, which would lead to many, many false conclusions
20 and many poor recommendations in an audit report of that
21 type. I think that the way the thing is handled in

1 Maryland is you have the State Auditor appointed, but
2 all of his staff are merit system people, who are career
3 people and learn as they go about their duties a tremen-
4 dous amount about the governmental structure and about
5 how it works and the intricacies of it and what is the pri-
6 mary concern of each agency, which I think would be lack-
7 ing if you did this on a contract basis.

8 Now, in a second factor dealing with a contract
9 basis, in local subdivisions, which actually put out a
10 bid, in other words, select the low bidder to do an audit
11 job, they have a pretty -- and I will go off the record
12 here --

13 (Discussion off the record.)

14 MR. NOSSEL: In the present type of audit, you
15 can go in and find nothing major wrong in any agency.
16 In other words, they are performing in accordance with the
17 stated function of the office, and nobody has their hands
18 in the till, but there are still many minor points,
19 relatively minor, that deserve some criticism, that
20 this doesn't have the kind of controls on it that it
21 should have, or this may be on a borderline as being
~~within the meaning of a certain Section of the Code.~~

1 One common practice in these days of difficulty in get-
2 ting personnel is to bring a retired person back for
3 a temporary period because you have got to have the work
4 done. Now, there is a question: Is this against the
5 Retirement Section Laws, but in order to get the work
6 done, which is the primary function of the agency, they
7 go get the person to come in and do it. They don't
8 worry too much about whether there is some technical
9 violation here. You could have that thing magnified out
10 of all context, and you would have the newspapers full all
11 the time of this internal wrangling that some official
12 is accused of not operating properly when all that is
13 being talked about is a very, very minor aspect of his
14 job.

15 I think you have, if you just brought in a
16 CPA firm, I think all of these things would happen. You
17 wouldn't get the best firms to bid if you did it on a
18 low bid basis. If you did it on a selection basis with
19 no bid, you would have accusations which might not reach
20 the public, but they would exist within the profession,
21 that this particular firm banged somebody in the Legis-

1 lature, or whatnot, and that they are getting this as a
2 political plum. I am speaking of this because I am a
3 CPA myself, and I do know a lot of these people in the
4 field.

5 MR. BROOKS: Thank you. One additional ques-
6 tion, back to the political aspects of who should be
7 elected and not: We have talked about the situation
8 where the Comptroller and Attorney General, for instance,
9 are of/^adifferent party from the Governor. Where they
10 are not only the same party but actually the same slate,
11 what is the effect of having a Democratic slate, which
12 is the practice in Maryland, where the Governor runs
13 with a selected Comptroller candidate or Attorney General
14 candidate and to some degree considers other factors
15 than just capability in choosing this, in order to give
16 more popular qualifications and rounding out all the
17 considerations for a full ticket? What is the effect both
18 of the selection process, of getting the type of people
19 who should be in office, as well as what is the real
20 independence of the Comptroller and the Attorney General
21 who is elected with the Governor who has selected them to

1 run on his slate with him, if they are all elected from
2 the same original slate?

3 MR. GOLDSTEIN: Mr. Brooks, the only way I
4 can answer the question, here is the record of these
5 people right here, the record of people who have run on
6 these tickets. They have had the opportunity to do
7 their job. The public has had an opportunity to gauge
8 and to review what they have done, and they have passed
9 the test. The Democratic party, speaking for the Demo-
10 crats, I feel have run topnotch people for Governor,
11 Attorney General and Comptroller, and the acid test has
12 been met. My situation, I ran with Governor Tawes and
13 Mr. Ferdinand Seibert for Attorney General. Mr. Seibert
14 was an excellent Attorney General, he was an excellent
15 Member of the Legislature, Speaker under Governor Lane's
16 administration, the legal mind on our Finance Committee,
17 and then he became Attorney General and the Governor
18 made him a member of the Court of Appeals. Mr. Hall
19 Hammond, the predecessor, an outstanding Attorney General --
20 Governor McKeldin made him a member of the Court of
21 Appeals, now Chief Judge. Thomas Finan, a fine Attorney

1 General, now a member of the Court of Appeals. Judgment
2 was passed on him by the State Bar Association and local
3 Bar Associations. All these people over the last 25 or 30
4 years have met the test.

5 MR. ENEY: Is that true that they were all on
6 the same slate as the Governor, not only in the general
7 election but in the primary? Take the ones that you have
8 got on your list.

9 MR. GOLDSTEIN: The only situation where I
10 would say it was different, in 1939, '38 election, you
11 had a ticket headed by Howard Jackson, Governor Tawes,
12 Comptroller, and Bill Walsh for Attorney General. As
13 you know, in that election, the Attorney General can-
14 didate of Mr. O'Connor and his Comptroller candidate were
15 defeated, so Mr. O'Connor went into the general election
16 with two candidates from the Jackson ticket. All right.
17 Now, in 1946, that election -- let's see, in the '42
18 election, it was the war election, and they had an incum-
19 bent ticket running, if my memory serves me correctly --
20 in '46 you had a situation where Governor Tawes had a
21 ticket and Governor Lane had a ticket. Governor Lane's

1 ticket won. He became the Governor and Hall Hammond
2 became Attorney General and Mr. Lacy became the Comp-
3 troller.

4 In 1950 you had a situation where Governor
5 Lane was defeated and Hall Hammond was elected, with
6 Governor Tawes as Comptroller, and Mr. McKeldin became
7 Governor. In 1954 again you had a full Democratic ticket.

8 THE CHAIRMAN: In that primary, though, in
9 the 1950 primary --

10 MR. GOLDSTEIN: Seibert.

11 THE CHAIRMAN: No, the '50 primary, the Lane
12 ticket went in.

13 MR. GOLDSTEIN: In the primary?

14 THE CHAIRMAN: Yes. The ticket was Lane.

15 MR. GOLDSTEIN: Lane, Tawes and Hammond.
16 They won again.

17 THE CHAIRMAN: That is right. Tawes was not
18 opposed.

19 MR. GOLDSTEIN: He had no opposition. In '54
20 Governor Tawes still didn't have opposition.

21 THE CHAIRMAN: He still didn't have opposition

1 and Finan and Curley Byrd were on the same ticket.

2 MR. GOLDSTEIN: That is right. In '58,
3 Governor Tawes, Seibert and Goldstein ran on the same
4 ticket, and were elected and in '62 --

5 MR. ENEY: In the primary?

6 MR. GOLDSTEIN: In the primary and general
7 election. In the primary again, we won in '62, with
8 the team of Goldstein -- team of Tawes, Finan and Gold-
9 stein, with our Attorney General candidate, and the
10 United States Senator, Daniel B. Brewster.

11 MR. BROOKS: So from your experience, you
12 would say the fact you were on the same ticket doesn't
13 affect the independence of the office at all?

14 MR. GOLDSTEIN: Absolutely not. We have
15 Governor-elect Agnew. Louie Goldstein will compete with
16 him for the best people's interest in the State of
17 Maryland. That is my job. I have so written it. We
18 are not concerned with individuals.

19 MR. ENEY: Can I come back to another question?

20 MR. GOLDSTEIN: Check the record. I was Floor
21 Leader and President of the Maryland Senate during the

1 eight years of Governor McKeldin's administration.
2 Talk to him on or off the record. He will tell you he
3 had better cooperation with me than he had with the
4 Republicans.

5 MR. BROOKS: That is probably so.

6 MR. ENEY: Looking again at your interesting
7 list of Comptrollers, Governor Tawes served -- I am sorry --
8 yes, wasn't one of the Comptrollers in this period
9 appointed for a vacancy when Jim Lacy died?

10 MR. GOLDSTEIN: Jim Lacy died in July of 1950.

11 MR. ENEY: You had a Comptroller appointed
12 by the Governor?

13 MR. GOLDSTEIN: Governor Tawes was serving as
14 Bank Commissioner, appointed by Governor Lane after
15 their election, and he asked Governor Tawes to come back
16 and be the Comptroller on the death of the late James
17 Lacy.

18 MR. ENEY: He is the only appointed Comptrol-
19 ler in this 40-odd year period?

20 MR. GOLDSTEIN: A half year appointed man.

21 MR. ENEY: Did that include -- it did include

1 a budget-making period, didn't it?

2 MR. GOLDSTEIN: That is right. In fact, it
3 included the last budget of Governor Lane's which was
4 actually Governor Lane's incoming budget. The incoming
5 governor has the responsibility for that budget. That
6 would be the '51 F.Y. budget, a budget of \$143,307,000.

7 MR. ENEY: One other question entirely foreign
8 to this other. There is one provision in the Constitu-
9 tion, and I don't know how it works in practice at all,
10 but this is Section 18 of Article II. It says, It is the
11 duty of the Governor semiannually, and oftener, if neces-
12 sary, to examine under oath the Comptroller and Treasurer
13 of the State.

14 In practice, does this happen? Is it an oral
15 examination or just a written report?

16 MR. NOSSEL: It never happens.

17 MR. GOLDSTEIN: I have been Comptroller eight
18 years, and it never happened to me.

19 MR. NOSSEL: That is one of these obsolete
20 things.

21 MR. GOLDSTEIN: We publish this report annually.

1 This report goes to the General Assembly. It goes to
2 the Governor of Maryland. It is a complete report of
3 all the finances. All during the year, as I get the
4 revenue picture, monthly, weekly, I send that off to the
5 Governor. The Governor has the same information about
6 revenues as Louie Goldstein has, the same information I
7 have. I feel it is my duty to keep the Governor informed.
8 When I was the Floor Leader, I felt the Legislature didn't
9 receive adequate information as to the State finances.
10 I had the law amended where the Legislature, from the
11 Board of Revenue Estimates receives these reports. As
12 we put our monthly reports out on revenues, every Member
13 of the Legislature gets that same information. I send
14 it to the Legislature, to the Governor, and we feel it
15 makes for a beeter system of government. Keep people
16 informed. Let them know the facts.

17 MR. SAYRE: Mr. Goldstein, personally, I
18 think that all of the people in Maryland have been blessed
19 by having you as Comptroller, so God bless you.

20 MR. GOLDSTEIN: Thank you, sir. Thank you
21 ever so much.

1 MR. ENEY: He didn't quote you.

2 MR. SAYRE: In pursuing this a little more
3 here, your functions are as collector and estimator,
4 serving on the Board of Public Works, et cetera, as what,
5 a liaison? What is your function in serving on these
6 other boards? I am not clear.

7 MR. GOLDSTEIN: What board do you want to take,
8 Retirement Board?

9 MR. SAYRE: Retirement Board, yes. How, exactly,
10 is it necessary constitutionally for you to serve on these
11 other boards?

12 MR. GOLDSTEIN: There is nothing in the Con-
13 stitution. What you have to do, in order to realize
14 this, let me read off some of the duties. Board of
15 Public Works. That is in the Constitution, in the law.
16 The Governor's Advisory Council, Board of Revenue Estimates,
17 not in the Constitution but in the basic law, banking
18 boards, State Banking Board. I am ex officio member;
19 Board of Trustees, Employees Retirement System, Board
20 of Trustees, Teachers Retirement System, and Board of
21 Trustees of the State Police. That is all under the Code.

1 MR. SAYRE: My question is why. I want to
2 know why you serve there. You physically appear at many
3 of these meetings or have a representative?

4 MR. GOLDSTEIN: I attend every one of those
5 meetings myself. I have only missed one or two during
6 my whole eight years.

7 MR. SAYRE: This makes you acquainted with
8 these problems?

9 MR. GOLDSTEIN: Absolutely.

10 MR. SAYRE: And the reason for your being
11 there, for being acquainted is why?

12 MR. GOLDSTEIN: Why, because the law was writ-
13 ten, because the State Comptroller has a wide knowledge
14 of State finances, investments.

15 MR. SAYRE: So your counsel is asked as to
16 whether we can count on certain estimates that your
17 office makes?

18 MR. GOLDSTEIN: May I go off the record?

19 (Discussion off the record.)

20 MR. SAYRE: Would that require you be on these
21 boards?

1 MR. GOLDSTEIN: The fact I had been on these
2 boards, I had knowledge of these things.

3 MR. SAYRE: That they were investigating them-
4 selves?

5 MR. GOLDSTEIN: That is right.

6 MR. SAYRE: Does that mean we have a disparity
7 way of investigating then?

8 MR. GOLDSTEIN: Up to that time. Now we have
9 got a real good investment advisory group, top people.
10 That is in the law. That is written in the basic law
11 now.

12 MR. SAYRE: The law places that responsibility
13 on you, doesn't it?

14 MR. GOLDSTEIN: As a member of the Board,
15 I, the State Treasurer is on the Board.

16 MR. SAYRE: This is the Investment Committee,
17 so to speak?

18 MR. GOLDSTEIN: That is right.

19 MR. SAYRE: What I am trying to get at here,
20 this doesn't take away the necessity of an Investment
21 Committee, but who is responsible for these investments,
the Committee by itself is that right?

1 MR. NOSSEL: The Board.

2 MR. GOLDSTEIN: You have three different
3 Retirement Boards. The law says they are responsible.
4 In order to have the proper guidance, we have an Advisory
5 Council, three top men, Mr. Baker, Mr. Royster ,
6 Mr. McCardle, and we have Lewis Tignor, a full time man
7 who works for these three retirement systems, works
8 with the Director of the Retirement Systems. Then we
9 also have your company down there, T. Rowe Price and
10 Associates. We have got top counsel. We are responsible
11 for the money. At least, we now have a system that
12 is working. It is really good, because of our earnings.

13 MR. SAYRE: I have a line of thought here.
14 This is good. Everything you have done, I think was over-
15 due and you made it come into being, but the function
16 there that you are placing is as a member of the Board?

17 MR. GOLDSTEIN: That is right. Also as an
18 elected official. I want a job to be done so it reflects
19 credit to me and the State of Maryland.

20 MR. SAYRE: This reflects your estimates because
21 if you have a larger return --

1 MR. GOLDSTEIN: Absolutely.

2 MR. SAYRE: It affects the actuarial tables
3 and the whole bit?

4 MR. GOLDSTEIN: That is right.

5 MR. SAYRE: Now, you are an estimator. You are
6 a collector. You serve as a consultant or counsel to
7 these other places. You, yourself, are not an auditor
8 as such, are you?

9 MR. GOLDSTEIN: Absolutely not.

10 MR. SAYRE: Would it be wrong for you to also
11 be Auditor?

12 MR. GOLDSTEIN: A State Auditor who does audit
13 the reports is the State Comptroller under our law.

14 MR. SAYRE: If you had in the State Branch
15 auditing functions and you had an auditing office post-
16 auditing in the Legislative Branch to serve in that audit-
17 ing position along with your having an auditing position
18 of your own, would that be so bad?

19 MR. GOLDSTEIN: That would be an extra chain.

20 MR. SAYRE: I am thinking here we would have
21 the auditing function done by you. That would be another

1 responsibility of yours, not by an independent auditor as
2 such, but be in your office and responsibility, and then
3 have the so-called independent on the other side, the
4 legislative side. Would that be so bad?

5 MR. GOLDSTEIN: Actually, we audit practically
6 everything before it is paid through our general account-
7 ing office.

8 MR. NOSSEL: That is a pre-audit, which is
9 not nearly as complete as the post-audit.

10 MR. SAYRE: You need both functions, but it
11 seems to me it would be better to have them combined in
12 you, to whom we could pin the responsibility.

13 MR. GOLDSTEIN: If they want to give us man-
14 power and office space, fine. They give us responsibility
15 but not the office space or manpower.

16 MR. SAYRE: When we have this done, are there
17 other functions that I have not mentioned, broad cate-
18 gories that you perform that I am not aware of?

19 MR. GOLDSTEIN: I don't think so.

20 MR. NOSSEL: You have got the long list.

21 MR. SAYRE: They all fit into estimator,

1 collector, counsel, certain responsibilities that are on
2 this line of thought, isn't that right?

3 MR. NOSSEL: No. They actually go farther
4 afield than this. For example, in the question of clerks
5 and registers, we have to set the salaries of every
6 employee in those offices, which is the function we don't
7 like one bit.

8 MR. SAYRE: That could be as easily set else-
9 where, is that right?

10 MR. GOLDSTEIN: That should be under personnel.

11 MR. SAYRE: That is a function for which you
12 don't have to be responsible?

13 MR. NOSSEL: We have to be now.

14 MR. GOLDSTEIN: That is purely done by statute.

15 MR. NOSSEL: We would like to get rid of it.

16 MR. GOLDSTEIN: You have got 29 Clerks of
17 Court, 6 in Baltimore City, one in each of the 23 Counties.
18 You have got 24 Registers of Wills offices. We have to
19 set the salary for the elected official, which is then
20 done with the approval of the Board of Public Works,
21 which was done this past Tuesday.

1 MR. SAYRE: I forgot you set salaries.

2 MR. GOLDSTEIN: Yes. We have to get the
3 recommendations as to their deputies and regular employees.
4 What we have done since I became Comptroller, we have
5 established a system of salaries based on what the State
6 employees receive for equal responsibilities, with the
7 thought in mind, equal pay for equal work with a system
8 of increments, like we have for State employees. First,
9 they rebelled. It wouldn't work. We said, Try it for a
10 year. After a while they said it was a wonderful system.
11 Why didn't we do it before. It worked out pretty good.

12 MR. HOFF: They get more money than ever
13 before.

14 MR. GOLDSTEIN: They are doing more efficient
15 work. Take your Clerk's office, Register of Wills, where
16 you practice in Howard County. Is it more efficient?

17 MR. HOFF: Yes.

18 MR. GOLDSTEIN: Go in 23 Counties. They have
19 a modern setup. It is being improved. It is better than
20 eight years. The wheel squeaks, and it has to be greased.

21 THE CHAIRMAN: Isn't that still true, Louie?

1 MR. GOLDSTEIN: In many places, I am sure.

2 THE CHAIRMAN: I thought that was the universal
3 law that nothing would repeal.

4 MR. SAYRE: There you propose something that
5 some people said wouldn't work. You have made it work, is
6 that right?

7 MR. GOLDSTEIN: That is right.

8 MR. SAYRE: That means also that if some other
9 proposition were proposed that isn't presently in being,
10 as being workable, it could possibly work, too, isn't
11 that possible?

12 MR. GOLDSTEIN: That is true in life of most
13 things. That is why they make a different kind of car
14 every day. That is why they are now wearing Italian
15 clothes instead of American made clothes.

16 MR. SAYRE: What I am suggesting, the fact we
17 have been blessed with the competence that you have pro-
18 vided, doesn't mean that we couldn't possibly arrange
19 for even something that would work better. That is
20 possible, wouldn't you admit?

21 MR. GOLDSTEIN: I would have to admit that.

1 Forget about Louie Goldstein. Let's talk about the
2 Comptroller.

3 MR. SAYRE: Thinking about the long term
4 further, with these responsibilities?

5 MR. GOLDSTEIN: I look way ahead. I look into
6 the 21st Century.

7 MR. SAYRE: I regard the term, fiscal, as
8 quite different from that which is audit, collector,
9 estimator and budget. Now, I am taking a more aggressive
10 position here on the use of fiscal. I regard fiscal as
11 where you do have to know what your estimates are, where
12 you have got your present budget, and then as far as I
13 am concerned, program is what we are talking about with
14 the term, fiscal, and then we have to back it up with
15 money, and we cut our fiscal program according to whatever
16 the money situation is.

17 Now, this would normally come out of the
18 Governor's office, as far as fiscal program is concerned.
19 I regard a budget situation as magisterial, watchdog
20 position, one that does require competence, but I am not
21 sold yet that you couldn't have, generally speaking, equal

1 or better competence through appointive position of
2 these responsibilities than being elected. Let's take a
3 look at the other States who do have elected Secretaries
4 of State, Comptrollers or Auditors, whatever you wish to
5 call them, and they are not faring as well as Maryland,
6 and they are elected. Now, the same argument can be
7 turned around that, because they are elected, they don't
8 have as good a system. Isn't that possible?

9 MR. GOLDSTEIN: What State are you talking
10 about?

11 MR. SAYRE: You could take almost any State.

12 MR. GOLDSTEIN: I would like to know, which
13 State are you talking about? Be specific. You say some-
14 thing is wrong. Let's be specific. Which State?

15 MR. SAYRE: Well, let's take the State of
16 Washington, where the Secretary of State exercises some
17 of the same responsibilities you have there. I don't
18 think that they have had the same type of accountability
19 that you have provided.

20 MR. GOLDSTEIN: Washington State elects the
21 Governor, Lieutenant-Governor, Secretary of State,

1 Attorney General, Treasurer, Tom Martin. I knew Tom
2 Martin. Cliff Yale was the Auditor. They don't have
3 an office called Comptroller.

4 MR. SAYRE: No, Secretary of State handles
5 those functions. You also have split responsibilities
6 when you have so many elected officials. It is hard to
7 pin responsibility for this and that, it would seem to
8 me. In other words, you say you even think the Treasurer
9 ought to be elected. To me, this confuses responsibility,
10 hurts a fiscal program, and prevents the Legislature
11 from doing, from responding to executive leadership in
12 the way that perhaps would be more beneficial to the
13 public. In other words, if you can pin your finger on
14 someone who is responsible for something, wouldn't you
15 say that that is an easier way for the public to make the
16 elective officials accountable, when it is on a broader
17 scale, than simply the responsibilities you presently
18 hold, collector, revenue estimator, et cetera?

19 MR. GOLDSTEIN: I am a great believer in let-
20 ting the people have a strong voice in government by
21 electing people. To me, it represents a stronger, better

1 government. This has been my experience since I have
2 been in government. Look around the country. Take
3 North Carolina. They elect their State Treasurer. He
4 can't be in the banking business. They have it spelled
5 out, he can't be in the banking business. They have the
6 Auditor General, which does the same function as the
7 Comptroller of Maryland.

8 THE CHAIRMAN: Anything else?

9 MR. SAYRE: I am just wondering also about --

10 MR. GOLDSTEIN: You have a theory that hasn't
11 been put into practice.

12 MR. SAYRE: But it has.

13 MR. GOLDSTEIN: We are talking about Maryland.

14 MR. SAYRE: I think Maryland benefits by the
15 fact it does have such a short ballot on a Statewide
16 basis. It might benefit more if it were shorter.

17 MR. GOLDSTEIN: It is not on a State level,
18 but on a County level.

19 THE CHAIRMAN: May I make an observation here?
20 Mr. Sayre has got a theory, it is not Mr. Goldstein's
21 theory, and actually we are here today to find out what

1 Mr. Goldstein's theory is. I don't think you are really
2 going to serve any useful purpose in questioning him
3 along those lines, Phil, because I have known Mr. Gold-
4 stein now for 25 years, and I know that he doesn't change
5 when he has got his mind made up about something. He is
6 not going to change it. I think we see exactly how he
7 looks at this thing. I would think we should let it go
8 at that.

9 MR. SAYRE: I think it conceivable, though,
10 with good history that we could have a less competent
11 Comptroller than desirable, and it would damage the
12 position of the Governor, perhaps, even though they were
13 on the same ticket.

14 MR. GOLDSTEIN: I think the people of Maryland,
15 the last election proved it, they will look the situation
16 over pretty good.

17 MR. SAYRE: You are a pretty powerful man.

18 MR. GOLDSTEIN: I take the position that a man
19 aspires for the three top offices, Governor, Attorney
20 General and Comptroller General, with the present situa-
21 tion, with the newspapers, TV, Women's League of Voters,

1 and the people themselves, they pretty well know whether
2 a person can do the job or not.

3 MR. SAYRE: I would like to ask a side question
4 as to whether you feel earmarked taxes, at least as to
5 additional earmarked taxes are concerned, could pose a
6 danger in structuring the revenue system in Maryland?

7 MR. GOLDSTEIN: Let me see if I understand your
8 question, earmarked taxes?

9 MR. SAYRE: Dedicated taxes, where the taxes
10 are dedicated out of the general Treasury.

11 MR. GOLDSTEIN: Highways? You are talking
12 about gasoline, titling?

13 MR. SAYRE: Those are existing.

14 MR. GOLDSTEIN: They are dedicated to the
15 construction of primary, secondary roads, matching funds,
16 through your interstate roads. Maryland has had that
17 system. At one time, we tried to write it in the Consti-
18 tution. In fact, I tried to lead the fight to get it in
19 the Constitution, and I believe when a highway user goes
20 out here and pays his or her money, for titling a car,
21 gasoline, those monies should be used for those highway

1 purposes and not filtered off into something else.

2 THE CHAIRMAN: I think what Mr. Sayre --

3 MR. GOLDSTEIN: Is that the question?

4 THE CHAIRMAN: That is not exactly what he
5 meant. What he is driving at is this: Should the Con-
6 stitution contain a provision which would prohibit other
7 than gasoline taxes, which can't be repealed, because of
8 the issuance of bonds outstanding against them, should
9 the Constitution contain a provision which would prohibit
10 the General Assembly from dedicating certain tax revenues
11 to certain specific objects, such as was done, for example,
12 when the tobacco tax was raised, and it was dedicated
13 for teachers' salaries except for that one year. You
14 will remember.

15 MR. GOLDSTEIN: I remember very distinctly.
16 The Governor vetoed the bill; he came back and asked me
17 not to override his veto until he had a chance to deliver
18 his State of Union message. I said No, we promised the
19 teachers we would act on it promptly. We overrode his
20 veto.

21 THE CHAIRMAN: Mr. Sayre's concern, I don't

1 want to speak for him, is this: If it is possible that
2 the Legislature dedicates specific taxes for specific
3 purposes and does this in a great many cases, then you
4 are going to get a very rigid system of government which
5 is almost going to be or could be unmanagable, and he has
6 suggested that might be desirable to have a specific
7 provision in the Constitution which would prohibit the
8 General Assembly from doing this. Is that what you ask?

9 MR. SAYRE: Yes, as far as to new taxes.

10 MR. GOLDSTEIN: I think that whole situation
11 is sound unless you had a dire emergency that you couldn't
12 anticipate today. Today we live in the Atomic Age, Space
13 Age.

14 MR. SAYRE: You get a lot of things under
15 those circumstances.

16 MR. GOLDSTEIN: That is right. As a general
17 rule, I would say it would be a very sound and good
18 recommendation.

19 MR. NOSSEL: May I make an observation here?
20 Go back in time. We are presently operating under the
21 Constitution of 1867. If that Constitution had contained

1 such a provision as this, it would never have been pos-
2 sible to dedicate any of the highway taxes because
3 obviously in 1867, no one could possibly visualize the need
4 for a network of highways such as we have today. Now,
5 my feeling is that if you didn't or hadn't had those
6 dedicated taxes, you simply would not have the highways
7 that you have today. You wouldn't have an adequate high-
8 way system because it is too easy to take the funds from
9 this lucrative source and use it for other purposes. You
10 have many times, well, in the depression years, one time
11 they had some major diversion from this when they had to
12 take the money for Welfare purposes. You have times when
13 the crucial issue is mental hygiene, as existed a number
14 of years ago, and it was necessary to build these hospitals
15 up, et cetera. This is a very easy source of diversion,
16 so if you follow your theory through, if you had had that
17 in 1867, you would have drastically affected the growth
18 of your highway system. Can you possibly sit here now
19 and visualize what 50 years from now may hold or 30 years
20 from now may hold in technological improvements, where you
21 might really not even have highways. You might have

1 routeways for these vehicles skimming on the ground. I
2 think this is a little dangerous, really, because I think
3 you are attempting to tie the Legislature, the hands of
4 the Legislatures of the future. I think -- I don't think
5 they are likely to overdedicate funds, because if
6 they find that they are getting in a bind, I think they
7 will pretty quickly undedicate these funds, so to speak.
8 I think it is essential that you have a dedication of
9 certain types of funds if you are going to perform this
10 type of long range function, such as the construction
11 and maintenance of highways.

12 MR. GOLDSTEIN: Let's take a second example
13 of what you are saying. When the Maryland Port Authority
14 was created, and I had a big hand in creating it, trying
15 to call it the Baltimore Port Authority, and it kept being
16 defeated, so as Chairman of Legislative Council, I said,
17 Change the name and make it Maryland Port Authority.
18 Then the question came, How are you going to finance it?
19 I want to go off the record here now.

20 (Discussion off the record.)

21 MR. SAYRE: You are saying, then, it is impos-

1 sible, and this is what worries me, you add one tax on top
2 of another, so dedicated, rather than going to, you know,
3 just as a tax source, going to the general Treasury, and
4 you know in your mind when you raise that, that you are
5 going to allocate it to the Port Authority, but you are
6 saying politically you have to dedicate it?

7 MR. GOLDSTEIN: In these instances, that is
8 the only way you could have gotten the money because your
9 gasoline tax lobby wouldn't let that money go to the Port.
10 That is a powerful lobby in the State. We had a hard
11 time even raising it from six to seven cents two years
12 ago.

13 MR. SAYRE: I wouldn't cut into that from
14 which we had Federal grant in aid. I think we would have
15 to comply with the Federal regulations.

16 MR. GOLDSTEIN: I think it is better to have
17 it in the Code, not in the Constitution. Over the long
18 haul, based on this changing government and the changing
19 way of life, progress we are making in science and
20 technology, it is amazing what is going on. There was a
21 man on television this morning telling about the very

1 thing you are talking about, the new type road, using new
2 types of engines.

3 MR. SAYRE: I am not upsetting what is already
4 in existence. I am just concerned about the future.

5 MR. GOLDSTEIN: I think the less cluttered up
6 your Constitution, the better off you are. Leave it in
7 your basic Code. The Legislature meets every year. They
8 can change it if circumstances warrants it and the people
9 want it. I think it gives you more flexible government.

10 MR. MINDEL: I know it is getting late. I
11 would like to get back to the State Treasurer for a moment.
12 You seemed to stress the checks and balances. Isn't the
13 State Treasurer, unless a personal appointee of the
14 Governor -- doesn't the Legislature generally confirm the
15 Governor's recommendation of the State Treasurer?

16 MR. GOLDSTEIN: In my time, yes. In my time,
17 I have had the pleasure of voting for, by gosh, I voted
18 for one State Treasurer in the whole time.

19 MR. ENEY: That wasn't true in McKeldin's
20 administration.

21 THE CHAIRMAN: There was quite a fight on at

1 one time.

2 MR. NOSSEL: In O'Connor's second term, as I
3 recollect, he never did send down the nomination, but the
4 Legislature elected, reelected Mr. Miles without a Governor's
5 nomination.

6 THE CHAIRMAN: Then in McKeldin's second term,
7 there was quite a run on Miles by somebody from the Eastern
8 Shore. I forget who it was now.

9 MR. GOLDSTEIN: Curley Byrd was a candidate
10 at one election we had.

11 THE CHAIRMAN: Who was the candidate in Ted
12 McKeldin's second administration?

13 MR. HOFF: Salisbury, he came from Salisbury.

14 MR. GOLDSTEIN: Avery Hall was the Governor's
15 candidate and Curley Byrd was the other candidate or
16 Hooper Miles, and the Legislature went along with Hooper
17 Miles. They felt he did a good job.

18 MR. MINDEL: Do you feel as strongly about having
19 the State Treasurer as a constitutional officer as you do
20 the Comptroller, in view of what we have said here?

21 MR. GOLDSTEIN: Well, also in this Report here,

1 I show you, you have only had five State Treasurers in
2 67 years.

3 MR. MINDEL: But he is a constitutional officer.
4 Do you feel he should continue, and your Comptroller's
5 duties and what has actually taken place in practice?

6 MR. ENEY: I thought he answered that.

7 THE CHAIRMAN: He has been through that.

8 MR. ENEY: I think what he said was if you had
9 a third man like the Attorney General on the Board of
10 Public Works, he wouldn't care whether the Treasurer was
11 in or not.

12 MR. GOLDSTEIN: That is right. I think his
13 duties should be spelled out so he doesn't have any con-
14 tact with banking.

15 THE CHAIRMAN: As I understood it, Louie said
16 one person could do all the fiscal jobs.

17 Anything else, gentlemen?

18 MR. GOLDSTEIN: There is one more duty we have
19 in the last year. We now have charge of the uniform
20 disposition of unclaimed property under Article 95, and we
21 appointed a very fine career man in this office, Joseph

1 Oates, to head up that division.

2 Gentlemen, I certainly thank you for your
3 courtesies.

4 THE CHAIRMAN: We thank you very much, Mr.
5 Comptroller for all of the hospitality you have shown us
6 here this morning. It has been a very enlightening dis-
7 cussion.

8 MR. ENEY: I think we are very much indebted
9 to you.

10 (Whereupon the meeting concluded.)
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1 CONSTITUTIONAL CONVENTION COMMISSION

2 Committee on the Judiciary Department

3
4 Meeting of the Constitutional Convention
5 Commission, Committee on the Judiciary Department, held
6 on Tuesday, November 29, 1966, at 6:30 p.m., at Room C-216,
7 University of Maryland Law School, Baltimore, Maryland.
8

9 PRESENT:

10 Robert J. Martineau, Esquire,
 Presiding as Chairman
11 H. Vernon Eney, Esquire,
 Chairman of the Commission
12 John C. Brooks, Esquire, Executive Director
 Melvin J. Sykes, Esquire, Member
13 Mrs. Elsbeth Levy Bothe, Member
 John R. Hargrove, Esquire, Member
14 Kalman Hettleman, Esquire, Staff Member
 Lawrence W. Rodowsky, Reporter
15

16 ALSO PRESENT:

17 Judge Daniel Friedman
 Judge C. Warren Colgan
18 Judge J. Dudley Digges
 Judge Ralph W. Powers
19

20 Reported by:
21 W. P. Banister

1 THE CHAIRMAN: We will have a number of
2 matters to take up this evening. The first will be to
3 hear from Judge Friedman and Judge Colgan concerning the
4 previous reports of this Committee and the effect of
5 those reports on the Orphans Court for Baltimore City.
6 I think that's what you are going to do, limit it to
7 that aspect of it.

8 JUDGE FRIEDMAN: Yes.

9 THE CHAIRMAN: Do you have a prepared
10 statement, Judge?

11 JUDGE FRIEDMAN: I have no prepared statement.
12 I talked to Mr. Eney and the setup of the meeting could
13 be a short opening statement and let Judge Colgan give
14 his statement and any questions you would like to ask
15 we will be glad to answer.

16 Also I will present as an exhibit a state-
17 ment of budget request from the Baltimore City Budget
18 Committee with our jurisdiction and the amount of work
19 we have in the Baltimore City Orphans Court. Knowing
20 that there was a Constitutional Convention Commission and
21 not knowing that there was --

1 MR. ENEY: May I interrupt a moment? I
2 am conscious of the record we have to present to the
3 Convention. For the record, would you mind stating first
4 your full name, position, and how long you have been with
5 the Orphans Court.

6 JUDGE FRIEDMAN: Judge Daniel Friedman, member
7 of the Bar for thirty years, Judge of the Orphans Court
8 of Baltimore City for twelve, Chief Judge since 1959.

9 My colleagues are C. Warren Colgan and
10 Anthony DiDomenico.

11 As I was saying, knowing that there was a
12 Constitutional Convention Commission but not knowing
13 there was a Subcommittee for the Judiciary, the first
14 time I learned of this Committee was one of the Judges of
15 the Supreme Bench handed me a 54 page booklet and very
16 well done, but I found one sentence in it we will not
17 consider the Orphans Courts because they will be abolished.
18 Being the Chief Judge of the Orphans Court of Baltimore
19 City, my ego and my feelings were hurt. First I was
20 never called nor were my colleagues called to testify.
21 I called Mr. Eney and Mr. Eney didn't know that we weren't

1 called. I didn't mean to call Mr. Eney to defend our-
2 selves but to explain to the Subcommittee what work the
3 Orphans Court of Baltimore City does. I am only talking
4 about the Orphans Court of Baltimore City, not the
5 counties.

6 Mr. Eney very graciously said he would give
7 us a hearing any time we wanted before this Committee.

8 I want to also make plain that the Committee
9 consists of, I have the names. Robert Martineau, Mrs.
10 Bothe, you have the names, with all due respect to this
11 Committee in my twelve years as Judge in the Court, the
12 Committee, not to criticize the Committee, but the
13 Committee, as it stands now, have never had a lucrative
14 practice or practice in the Court. I am sure that the
15 firms of some of these young men have practice in the
16 Orphans Court. That is one of the reasons that I felt
17 slighted for not being called to be heard.

18 Now we are here, and just very briefly the
19 Orphans Court sits five days a week. The Judges are in
20 their chambers at 9:15. We leave when all the work of
21 the day is finished. I personally am there from 3 to 4

1 o'clock without having lunch. There is a tremendous
2 amount of work in the Orphans Court. I will read or
3 give you just some of our work, the amounts. In 1966-67,
4 in real estate docket, 40 cases. There will be 165 court
5 docket cases that will be tried and finished. There will
6 be over 140 citation docket cases. There will be in
7 excess of 2500 estates, intestate and testate. You can
8 understand you will have maybe two or three accounts in
9 each estate, you can understand you will have a real
10 inventory, personal inventory, reports of sale, list of
11 debts, claims docket, et cetera. There will be more than
12 800 letters of guardianships. Out of those 800 letters
13 of guardianships, we have a minimum of hundreds, maybe
14 thousands subject to further order of the Orphans Court.
15 That is where a minor child, female or male, under twenty-
16 one years of age is entitled to money. The book is
17 deposited in a savings bank subject to order of the
18 Orphans Court of Baltimore City. Before any moneys
19 can be drawn, one of the Judges interviews each child
20 or parent that comes in and we then make up our mind if
21 they should be allowed a hundred dollars, two hundred

1 dollars.

2 Also small estates, we had over 529 small
3 estates last year. We will have this year over 1500. It
4 will be three times, maybe five times the amount because
5 of the Medicare and Social Security. Any checks under
6 Social Security, if a party dies, they have to take a
7 small estate out. Medicare works if the party is sick
8 and goes to a doctor, most doctors want to be paid, they
9 receipt the bill, the party sends it to the Medicare
10 office. During that time if he would pass, he or she would
11 pass away, they would have to take a small estate out for
12 any amount that Medicare owed them. You can see the
13 small estate docket will be three to five times the amount
14 of work.

15 We also have in our hearings, we have meetings
16 of distributees, meetings of creditors, we can also
17 hear issues to be sent up to the Supreme Bench on caveats,
18 but we also have the power to hear a caveat case if both
19 sides agree to hear it in the Orphans Court and we have
20 heard many of them. We have hearings every day in the
21 week. This is docket hearings. Today we had a meeting

1 of distributees, tomorrow and Thursday and Friday a
2 hearing of what two administration accounts should be
3 accepted by the Court and Register of Wills in the matter
4 between executors and lawyer.

5 As I said before, it is not a two-hour job.
6 It is a job that is a full day. I am very proud of the
7 Orphans Court of Baltimore City. I will take all the
8 blame and all credit for it because I am the Chief Judge.
9 I think we are doing a terrific job. I think we are
10 doing the job where you can come in court, get the case
11 called, get the case heard within two or three weeks.
12 We have no backlog. I am afraid if there is any
13 abolishment or merger of the Orphans Court of Baltimore
14 City or any big metropolitan city or county, it would be
15 to the Supreme Bench of Baltimore City where Judge Foster
16 is now asking for five more Judges. And Mr. Sykes is
17 now trying a case in equity that is going to take a
18 month.

19 MR. SYKES: We hope.

20 JUDGE FRIEDMAN: You hope it will take a
21 month, where the whole system of the Orphans Court would

1 be tied up. Mr. Eney is here and some other lawyers here
2 that know they can come to the Orphans Court at any
3 time, sit down, have a conference, if it be 9 o'clock
4 or after five, and get matters straightened out.

5 I again say with my experience in the
6 Court, my experience as a lawyer, that it would just
7 pile up work, testamentary work, that is running smoothly.
8 I can't understand myself why the Court that is running
9 smoothly and the work is done, why there should be a
10 change. If it can be proven to me or my associates
11 that by abolishing the Court the work would be done
12 better, would be done faster, trials could be had, I will
13 go along with it. But to this point with my experience
14 in the Court, I can't see any abolishing or merging of
15 the Court would help the lawyers or especially the laymen.
16 During my campaign, I am rambling now, but during my
17 campaign I heard Municipal Court Judges who became
18 Municipal Court Judges lately, that they see more people
19 for the first time than any other Court in the State.
20 I disagree with them. I feel that we see more laymen in
21 one week, giving them help and aid, than any Court in the

1 city except Traffic Court. The Traffic Court sees a
2 tremendous amount of people. We have in these small
3 estates 15, 20 of them a day, laymen come into Court
4 without lawyers because the sum of money involved, we
5 have to give personal help to, not practice law but
6 advice and help. If they need it, we send them to
7 Lawyers Referral or other agencies.

8 Judge DiDomenico is not here. He had
9 drawn this report. I would like to put it in as Exhibit
10 1 to the Committee. I think it speaks for itself. It
11 is our jurisdiction. I will let Judge Colgan go on from
12 there. If I can think of anything later or answer ques-
13 tions, I would be glad to.

14 THE CHAIRMAN: Judge Colgan, would
15 you do the same thing for the record.

16 JUDGE COLGAN: My name is C. Warren Colgan.
17 I have been a member of the Orphans Court, Judge of the
18 Orphans Court since March 1, 1965. Previous to that
19 time I had been a member of the Bar since 1938. Former
20 Assistant United States Attorney. Engaged in the private
21 practice of law until my appointment to the Bench of the

1 Orphans Court.

2 Therefore, you see, I am the junior in
3 service on the Orphans Court. Until the report of this
4 Committee on the Judiciary Department of the Constitutional
5 Convention Commission, I had not realized that trials
6 in absentia existed in the United States. I look at
7 the names on this Committee and in agreement with the
8 Chief Judge, we don't always agree, they are notable
9 because of their absence from the Court. I wondered
10 about this and considering the fact you have already
11 made your recommendation and probably nothing we can
12 say will change it, I would like your indulgence for a
13 few comments.

14 One member of the Committee is very well
15 acquainted with the Court, both in theory and in practice,
16 Melvin J. Sykes. His father was Chief Judge at least
17 beginning in 1940, that's as far back as I got, probably
18 further than that, who was a great scholar. Chief Judge
19 of the Court, unlike these county courts, or the Orphans
20 Court of Baltimore City has been comprised of lawyers
21 since before 1940. In deference to pleading our own cause,

1 because of this report, I think the citizens of a city
2 of 942,000 people have been rather fortunate in having
3 lawyers on this Court. However, as you know, the situa-
4 tion is different in the counties. You will recall,
5 without much effort, the great play in one of the papers
6 of Baltimore City concerning our county to the south.
7 Many allegations were made of inefficiency, a thirst for
8 per diem, a thirst for mileage, a few other matters.
9 As I said, when I came on this Court, I considered it
10 somewhat of an honor.

11 Not having been granted a hearing before
12 this report was made, I wonder what the reasons for
13 the abolition can be. I have worked on this myself, one
14 mind, one person, with some conferences here with the Chief
15 Judge. When I read this thing, I thought I would examine
16 briefly the situation in the 48 states of the Union.
17 I know there are more than 48 at the moment but two of the
18 new states have come from a Federal jurisdiction recently,
19 Alaska, Hawaii, and, of course, the District of Columbia
20 is a kingdom of its own.

21 I have discovered from what I have done that
half of our states have separate probate courts. The

1 other half are more or less split up but that is their
2 system. But there is one brilliant fact in these systems
3 of probate jurisdiction. Almost without exception the
4 large cities of this country have their own separate
5 probate court, although in many of these states you will
6 find in the counties there are no separate probate courts.
7 If you will examine further, you will find that the reason
8 for this is that there is not enough business due to the
9 population for a separate probate court. Therein lies
10 some explanation of why in the majority of the large
11 cities of this country, in spite of reformation and
12 even in Illinois, Cook County, in which the City of
13 Chicago is located, under its very recent judicial
14 reformation has preserved a separate and a distinct probate
15 court.

16 In all the counties of Illinois other than
17 Cook County probate judges are now judges of the Circuit
18 Court by virtue of the new judicial article to the
19 Constitution of Illinois which became effective the 1st
20 of January, 1964. Outside the City of Chicago, the
21 probate functions have been assumed by the Circuit Courts.

1 What is the reason that you wish to destroy
2 the Orphans Court of Baltimore City? With my single
3 mind and my short experience at law, I think experience
4 and some ability is the main thing when you try to be a
5 lawyer, who wants to change this court? Well, there are
6 some clues. I refer to an article in one of the papers
7 in which it was said, speaking of the famous, or any way
8 you wish to designate it, Bond Commission Report, and
9 the descendents of this report sit upon this Commission.
10 Recently there has been a general recognition even among
11 politicians that the recommendation of 1942 had merit.
12 Montgomery County has moved to abolish its court, this
13 through a constitutional amendment adopted in 1964.

14 Of course, that is incorrect on two scores,
15 the report was 1943 and anyone who is able to read, knows
16 that the Orphans Court of Montgomery County has not
17 been abolished. It has been perpetuated, as Mr. Sykes
18 heard and I heard, forever by a constitutional amendment.

19 Therefore, in Maryland no Orphans Court
20 has been abolished. One of the members of this Commission
21 just previous to the election August 16, 1965, Mr. Miles,

1 I wish he were here tonight, spoke and said the Orphans
2 Courts, abolish them promptly. Part of his statement I
3 will read. "Actually in the routine administration of
4 their duties the Orphans Courts in the counties and to
5 a lesser degree in Baltimore City rely upon the guidance
6 of the Register of Wills."

7 I don't know what good it would do to tell
8 you tonight we rely not at all upon the Register of
9 Wills any more than any judge of any court in the City
10 of Baltimore relies upon the Clerk of his court. These
11 were statements made and apparently followed as I said
12 before on this Commission and Committee are the descendants
13 and inheritors of the gentlemen who drew the Bond Commission
14 Report. If I had to rely upon the Register of Wills for
15 advice and guidance in conducting the affairs of the
16 Orphans Court of Baltimore City, Judge Friedman and I
17 would be in very bad shape because we do have judicial
18 duties. Mr. Shaughnessy is an excellent Clerk of the
19 Orphans Court of Baltimore City. He is the Clerk by
20 statute. We do not rely upon him any more than any judge
21 of the Supreme Bench relies upon the Clerk of the Court

1 in which that judge happens to be sitting.

2 Back in 1913 a lawyer, the like of which does
3 not sit upon this Commission -- you all agree happily to
4 this one statement I shall make -- Mr. Edgar H. Gans made
5 a report concerning the sources of testamentary law in
6 Maryland. The report of that speech is reported and a
7 very fine lawyer and one of the greatest nisi prius judges
8 we ever had who should have been on the Supreme Court of
9 the United States, the closest I have ever come to a think-
10 ing machine, Judge Calvin Chesnut, had to read the
11 report because of the illness of Mr. Gans. This in 1913
12 when the courts of Maryland as regards the Orphans Court
13 were in the hands of laymen. This, of course, has
14 been studiously ignored ever since the Bond Commission
15 Report. Mr. Gans said, and I quote, "I hope the day is
16 not far distant when by constitutional and legislative
17 changes the Orphans Court, at least in the large cities of
18 the state, will be given the full dignity of Superior
19 Courts with full power to decide all questions involved
20 in the devolution of the estate of a decedent."

21 Gentlemen, that statement has proved true

1 in all the states of the Union practically. The large
2 cities have preserved these courts, have given them much
3 broader power than we have. This was a statement made
4 in 1913. So now we come down to the Bond Commission
5 Report. Three recommendations were made. That the
6 courts of the City of Baltimore be consolidated, that the
7 Orphans Courts be abolished, and that the numbers of the
8 members of the Court of Appeals be reduced. This was
9 made in 1943 by, as I have seen in the press on at
10 least 100 occasions, a well qualified commission and
11 it was. Two of the recommendations never saw the light
12 of day from any legislature that has met since 1943 to
13 date. Those two that never got out were the consolida-
14 tion of the courts of Baltimore City, along with the
15 Clerk's offices, and the abolition of the Orphans Courts
16 of Maryland. The third one did see the light of day and
17 it sort of died a stillborn death because no sooner had
18 the number of the members of the Court of Appeals been
19 reduced to five, within a space of two years the member-
20 ship of the Court of Appeals was increased beyond the
21 five.

1 This report contained a stinging dissent
2 by one of the, in my humble opinion, great judges of the
3 Court of Appeals, Judge Neal Parke. He dissented from
4 the major conclusions and recommendations of the Commis-
5 sion and in particular concerning the reduction in
6 number of the Court of Appeals.

7 Gentlemen, I mention this to you for this
8 reason. Looking at the membership of this Commission
9 and their descendents are here tonight, some of them,
10 it certainly was comprised of able, well intentioned
11 lawyers. But the recommendations, like many things in
12 life, have not seen the light of day. If you will read
13 this report, you can find it in the 1943 edition of the
14 transactions of the Maryland State Bar Association,
15 48th Annual Meeting, if you will read that concerning
16 the Orphans Court, I defy any fair minded man to come
17 to any conclusion other than the abolition of the Orphans
18 Courts of the State of Maryland was heartily recommended
19 by this Commission composed of goodlawyers and gentlemen
20 for a basic reason, and that is the condition of the
21 county courts with which I wasn't concerned until I read

1 the report of this Committee on the Judiciary Department
2 which throws the Court of Baltimore City into the same
3 category with the county courts.

4 I am proud to be on the Court. It is not
5 our fault that the counties have what they have. It
6 is not my business. It may be yours. If they want
7 laymen, I have a list of all members of every county
8 court, the undertaker, bus operator, gasoline pump
9 operators, school teacher, handling the probate and
10 questions concerning a large estate, that's their affair.
11 But I think that to condemn the court here in Baltimore
12 City in the same category with those of the county under
13 the guise of an improvement and the question still
14 remains who wants this change, in view of the fact the
15 Legislature hasn't changed it since 1943, I think it was
16 an unfair and unjust thing to do, not to me as a junior
17 member of this Court, but to the Court as a whole,
18 particular here Judge Friedman who has been Chief Judge
19 for seven years.

20 In conclusion I say to you this. Any
21 changes that should be made in this Court will come from

1 Judge Friedman and those people who sit on it and
2 those who practice in it. Thank you.

3 JUDGE FRIEDMAN: I just want to add just
4 two things. I am sure some of you have some questions.

5 Article 10, Section 29 to me is very
6 important as to what the Orphans Court of Baltimore
7 City is made up of lawyers. Article 10, Section 29,
8 says that no judge of any court of this state, including
9 judges of the Orphans Court, could act as an attorney in
10 any court of law or equity and in any event a judge of
11 the Orphans Court could not be -- that's not in there.
12 In Article 10, Section 29, there must have been some
13 reason, I am sure Baltimore City was the reason, that
14 no judge could act in any court of record. Since I
15 have been on the Bench and since Judge Colgan mentioned
16 Judge Sykes whose book we use religiously as a Bible, very
17 fine work, the court has consisted of high class lawyers,
18 men that have practiced, men who have done a good job.
19 In the last ten years Judge Foster, Judge Perrott, and
20 Judge Jones have been elevated to the Supreme Bench of
21 Baltimore City. My classmate Judge Foster is now Chief

1 Judge, I think all doing a good job. I am very proud,
2 as I said before, of this court. I agree with Judge
3 Colgan, not with all things he said, but I would agree
4 I am proud of this court.

5 I don't want it to be compared with any
6 other Orphans Court in Maryland.

7 Sometimes it makes me cringe at some things
8 that happen in the courts. I get at least ten calls a
9 week from Baltimore County, Anne Arundel County, some other
10 counties far away, asking questions. Again I am not
11 pleading for any court or not pleading for even the
12 Orphans Court of Baltimore City but I am here to present
13 to this Committee the tremendous amount of work we have
14 in the court. I feel that if there was an abolishment or
15 merger to take it up into the Supreme Bench, I don't
16 think personally one judge could handle it. I think
17 a minimum of two judges would be needed. If there
18 wouldn't be two judges, you would probably have one
19 extra judge and three masters. I am not going to comment
20 on how successful the Master of Equity has been but I am
21 sure practicing attorneys know questions with masters,

1 when it comes to a real question, you still have to go
2 to the judge and get something settled.

3 As long as Montgomery County was mentioned,
4 the Orphans Court was not abolished, the judges were
5 abolished. Judge Anderson was very upset, I don't know
6 the gentleman, but he did know where to go. He called
7 one of the attorneys of Baltimore City to try to set up
8 his court for him. The attorney came into our court and
9 tried to get as much information as he possibly could
10 within a couple days. They are sitting one and two
11 Circuit Court Judges in the Orphans Court of Montgomery
12 County which doesn't have probably one-fifth of the
13 work Baltimore City has. Probably interesting to lawyers,
14 I have had reports come back from right good law firms
15 that before you can get a commission or counsel fee,
16 all eight or nine Circuit Court Judges have to sit
17 on this hearing. I am sure in the future things will
18 work out, but just for that, as an example of what is
19 happening out in Montgomery County up to date, you can
20 see what could happen in Baltimore City with the crowded
21 dockets of the Supreme Bench and what would happen if

1 all our work would go into the Supreme Bench.

2 One more thing. In 1964 the Register of Wills
3 of Baltimore City gave to the state \$3,625,000. In 1965
4 the Register of Wills gave to the state \$3,966,000.
5 In 1966 the Register of Wills gave to the state \$4,200,000.

6 I give you these figures to show most
7 people think because of the people moving from the city
8 to the county that the work of the Orphans Court of
9 Baltimore City is being lessened. Since I have been in
10 court, I think the work is three times as much now as it
11 was when I took over as Chief Judge in 1959.

12 Another example of the work is our court
13 docket, which took three and a half years to finish,
14 I checked with Mr. Raymond, that is court hearings,
15 not informal hearings on many cases we hear, but I am
16 talking about meetings of distributees, meetings of
17 creditors, implied revocation of wills, et cetera, that
18 it takes only twelve months to finish a docket, at most
19 sixteen months. You can just see by our cases that
20 are recorded cases, we keep in our dockets how the work
21 has added on.

1 That's about all I have, gentlemen.

2 THE CHAIRMAN: Would anyone like to ask
3 any questions of the Judges?

4 MR. SYKES: I would like to say first
5 I am personally very distressed at the fact that you
6 gentlemen have not been contacted and have not had an
7 opportunity to express your views much before this time.
8 I personally came to the Commission late and was not
9 part of any of the arrangements that may have led to this.
10 I am sure that there was no intentional slight and
11 that the only problem that could have existed was an
12 oversight.

13 It is a regrettable oversight, I can under-
14 stand the tinge of bitterness which I think I
15 detect and which I would feel under the same circumstances,
16 but I have participated in the Committee's deliberations
17 to the extent that I can say very definitely that there
18 is no intention to condemn the Orphans Court of Baltimore
19 City and that we were not in the frame of mind of hanging
20 anybody. The notion of a hearing from the point of
21 view of a judicial trial before we passed an unfavorable

1 verdict is not a realistic picture of what this Commission
2 has been trying to do.

3 This Commission has been trying to do a
4 job that I think you gentlemen want to approach in the
5 same spirit. That is how to get the best state court
6 system possible. For myself, I had heard a good deal
7 about the abolition of the Orphans Court from the time
8 my father sat on it. He was privately in favor of it
9 and he never expressed himself publicly one way or another
10 because of his colleagues on the one hand and because
11 he didn't want to be regarded as having a personal
12 interest on the other in case the court was elevated.

13 The term abolition of the Orphans Court
14 is a very unfortunate thing.

15 THE CHAIRMAN: I think Judge Friedman
16 used much the better term which was consolidation or
17 merger which, I think, is much more what we had in mind.

18 JUDGE FRIEDMAN: I think that is the proper
19 word.

20 MR. SYKES: The reason for the recommendation
21 was, I can testify, precisely because we thought the Orphans

1 Court was so important. We thought that in effect by
2 merging it where it can be a division of the general
3 trial court, where someone can be assigned to it the
4 way Judge Moylan is assigned to juvenile causes now, we
5 would be enhancing its status. This court is a fully
6 judicial court and it is now manned by judges who are
7 not treated on a par from point of view of salary and
8 everything else and pensions with the other judges --

9 THE CHAIRMAN: And tenure.

10 MR. SYKES: -- throughout the state. The
11 practical question is whether or not this court wouldn't
12 be elevated and its service improved to the citizens of
13 the state if whoever sat in the Orphans Court had the
14 full dignity, status and emoluments of a judge of general
15 jurisdiction in this state.

16 Now you get to other questions as to whether
17 in a particular jurisdiction it might take more than one
18 judge. Maybe it does. The question and the result of
19 the recommendation we make might very easily require a
20 substantial change in the picture of judicial manpower
21 throughout the state. This is entirely possible. But

1 the problem of the number of judicial personnel in a
2 court is entirely different and separate from the problem
3 of how you are going to structure the court system for
4 the next hundred years.

5 All of this was leading up to a question
6 that I wanted to get your thinking on. Assuming that we
7 want to upgrade the Orphans Court and the judges in it,
8 that is, the judges, not necessarily the incumbents, but
9 the judges who perform Orphans Court duties, and
10 assuming that we want to give it whatever advantages
11 may be gotten from a unified administration of a state
12 court system, what are the practical alternatives that
13 you would suggest as to how we might do the thing that
14 we both want to do? Are you suggesting that the present
15 Orphans Court judges be made Circuit judges in a
16 separate division? Are you suggesting that the Orphans
17 Court be frozen with its personnel as a separate court?
18 Are you suggesting that the Orphans Court be the only
19 separate such court throughout the state, a kind of
20 little island enclave? Or are you suggesting that the
21 Orphans Court should be preserved the way it was preserved

1 in Montgomery County where what really happened was the
2 Circuit Court by constitutional amendment was given
3 Orphans Court functions and it was provided that a
4 judge of the Circuit Court was to sit as the Orphans Court
5 with all of the limits on Orphans Court jurisdiction
6 which seems to me to be in a way the worst possible
7 system? I would like very much to get an elaboration
8 from you on the basis that we are all engaged in the
9 same constructive task and forgetting, if you possibly
10 can, about this image of the trial and condemnation.
11 I would like to know what you suggest is the kind of
12 blue print you would like to see.

13 JUDGE FRIEDMAN: Let me say personally
14 for myself, Melvin, I want to thank Mr. Eney, who was
15 very cooperative to me when I called him about the
16 report that I got from one of the judges. I am not
17 condemning anybody on this Committee. My feeling was
18 I was probably hurt a little bit by not being consulted
19 before this thing came out.

20 THE CHAIRMAN: Judge, I think/probably
21 should make a statement on that. I was not the Chairman

1 of the Committee.

2 MR. FRIEDMAN: I am not blaming any one
3 person.

4 MR. SYKES: Nobody wants to take the
5 blame but we are all sorry.

6 JUDGE FRIEDMAN: Lou Goldstein is mad too.

7 THE CHAIRMAN: I can't understand how it
8 happened.

9 MR. ENEY: Let me break in and say because
10 I am Chairman of the Commission I will take the blame.
11 I should have seen a hearing was held. It is an over-
12 sight but not a deliberate one as I know you know.

13 THE CHAIRMAN: We attempted in the very
14 beginning to communicate with every official and with
15 every office that was going to be affected by our
16 recommendations. Just as a matter of explanation, my
17 recollection is that we began dealing with the Conference
18 of the Courts of Limited Jurisdiction and perhaps the
19 slip-up was there that we thought you were represented
20 on that group and that the position of the Orphans Court
21 judges would be represented through that group. I am

1 really not sure but I think that's probably what happened.

2 JUDGE FRIEDMAN: In answer to you, Melvin,
3 I can't give you an exact answer. I think definitely,
4 from my experience, that the Orphans Court should not
5 be merged or consolidated in any court in big metropolitan
6 areas, any Supreme Bench or Circuit Court or any one of
7 the courts you want to call it.

8 I would say if the Committee feels that the
9 Orphans Court as it is today in Baltimore City is not
10 doing the job, it could be done better, lo: and behold,
11 I shouldn't try to persuade you, but my feeling is that
12 one judge cannot handle the Orphans Court work in
13 Baltimore City. A minimum of two judges. When I talked
14 to Mr. Eney, again I say that if they had one judge, you
15 might wind up with two and three masters, which I,
16 as an attorney, fear. I would like to see three judges,
17 not masters. I am not again saying that we have a
18 Master in Equity, I am not personally saying anything
19 about him, I would rather, as a lawyer, deal with a
20 judge when the judge has time than deal with the
21 master in between and then go to the judge.

1 I think something very interesting is
2 this. I read in the paper where the Chief Judge of
3 Baltimore County is going to designate one of the judges
4 to sit in his office to give attorneys a chance to come
5 in and discuss their problems, sign petitions, et cetera.
6 This is what we are doing. We have been doing this since
7 I have been Chief Judge. We are available to have all
8 petitions signed, all questions asked, anything, any
9 problem of law man or lawyer, he can come in to court
10 before court time and get it worked out.

11 This past week I spent eight or ten hours
12 with two lawyers on a very important matter that broke
13 out in the paper and it shouldn't. I sat with other
14 lawyers and so have my colleagues that saved so much
15 time and so much trial work by just having somebody
16 available that -- should I brag -- that knows something
17 about the Orphans Court work and knows something about
18 testamentary law that can settle matters.

19 Again I say if the Committee is satisfied
20 with the Court as it is set up in Baltimore City, I
21 would be for that a hundred per cent. If the Committee

1 feels that the Orphans Court should be on an elevation
2 with the Supreme Bench in Baltimore City and two judges
3 or three judges, I am against any of the masters, I would
4 be for that. I wouldn't be human if I wouldn't be
5 for elevating myself. But at this point I say again
6 that the Orphans Court of Baltimore City has run today is
7 doing a good job.

8 MR. SYKES: I was going to pursue that
9 point you raised a little bit further.

10 There isn't, as I see it in the proposed
11 draft of the Constitution, anything that would prevent
12 the general court from establishing a division for
13 particular kinds of cases or assigning particular judges
14 to that particular kind of case. Experience would
15 dictate how many judges you would need. Obviously if
16 the general trial court took on probate jurisdiction in
17 Baltimore City, you would need new judges to take on the
18 new jurisdiction because the court needs new judges
19 to take care of the jurisdiction it already has.

20 JUDGE FRIEDMAN: All we need is room.

21 MR. SYKES: Yes, we need room. The personnel

1 problem is a separate problem, as I say.

2 Is there any reason why what you would like
3 to see couldn't come to pass under a recommendation for
4 a statewide court system such as we made in which the
5 probate function would be taken over by judges of the
6 Superior Court rank, that is, rank equal to that of the
7 Supreme Bench in this system? It seems to me that is
8 really the recommendation we have made. If there is any
9 reason why that would not be a good thing, it would go
10 to the heart of what we are trying to hear.

11 JUDGE FRIEDMAN: Melvin, our jurisdiction
12 is wide, we are a statutory court, but we have wide
13 jurisdiction. They don't use it in the counties,
14 run up to Equity Court, run to Circuit Courts because they
15 don't have the judges capable to try cases. Now we
16 have jurisdiction in fee simple property up to \$15,000.
17 All we have to have is unlimited jurisdiction of
18 fee simple property, change Section 287, have authority
19 to try title where you have joint accounts, et cetera,
20 and have jury power.

21 MR. SYKES: What about elimination of the

1 appeal to the Superior Court? You wouldn't need it.

2 JUDGE FRIEDMAN: Wouldn't need it.

3 MR. SYKES: Wouldn't that be one of the
4 great advantages?

5 THE CHAIRMAN: In effect, isn't what you
6 are saying that you want to sit as a court of full power
7 in probate matters? All we are suggesting is that --

8 JUDGE FRIEDMAN: Again I say I am only
9 speaking for myself because Judge Colgan -- and Judge
10 DiDomenico is not here -- again I would not be truthful
11 if I didn't want to elevate myself to the same category
12 as a Circuit Court judge or judge of the Supreme Bench.

13 MR. SYKES: You will be my candidate under
14 this new constitution if that means anything to you.

15 JUDGE FRIEDMAN: I do say, not in defense
16 but for my two colleagues, they are doing a real good
17 job. Again I say one man, we have a minimum of 25
18 inventories and 20 accounts a day. We have to approve
19 those accounts and have to approve those inventories.
20 I will not put my initial on it and I am sure neither
21 will my two colleagues until we go over them word for

1 word. Take all circuit and probate courts on the East
2 Coast. In Baltimore City you can get an estate finished,
3 account okayed, counsel fee for anything involved, and
4 in a shorter time and done right than any other court on
5 the Eastern Seaboard.

6 This is my personal opinion from lawyers
7 that come in that do have a lot of practice in our court.
8 I again say the Register of Wills cooperates in this
9 thing where they give good service.

10 MR. ENEY: I would like to make a statement
11 and follow up this same discussion because it seems to
12 me this is the crux of the whole matter. I have been
13 practicing law thirty-seven years. When I came to the
14 Bar, the Orphans Court of Baltimore City had three
15 laymen as did the Baltimore City Court. At some point
16 later, it became the practice to have all lawyers on the
17 Bench in Baltimore City, fairly early, in the thirties.
18 It has never been deviated from then.

19 One thing I have never been able to under-
20 stand, get through my head at all, is why we have to have
21 a judge of the status that we think the Supreme Bench

1 judges are to try a case that used to be involved a
2 hundred dollars, automobile accident, contract, maybe
3 today a thousand dollars, five hundred or fifteen hundred,
4 but you don't need a judge of that status at all to
5 dispose of a multi-million dollar estate or pass on legal
6 questions involving many thousands of dollars day after
7 day. I have never been able to understand this.

8 You know and I know that I was in your court
9 on a matter involving well over a hundred thousand
10 dollars within the past few weeks. I was before one of
11 the Orphans Courts in the counties involving an estate
12 which was something like \$800,000, then had a direct
13 appeal from the Orphans Court to the Court of Appeals.
14 But the Orphans Court judges had to make the intial
15 distinction.

16 It seems to me -- and I think the
17 entire Committee and entire Commission is absolutely in
18 agreement on these propositions -- that probate work
19 is important and that it is just as important as auto-
20 mobile accidents and contracts and other kinds of litiga-
21 tion that go on day after day in the courts of general

1 nisi prius jurisdiction and that the judges of the
2 Orphans Courts or the judges exercising probate functions
3 ought to have exactly the same high degree of qualifi-
4 cations. I don't think anybody questions that. I think
5 one at least of the motives here is pull the Orphans Court
6 up to the level of the Circuit Courts, not abolish it or
7 get rid of it.

8 The second thing is that I think you
9 recognize that, as you mentioned a moment ago, the
10 Orphans Courts are statutory courts, they are courts of
11 limited jurisdiction, there are some things you can't
12 do. It has never made sense to me that the Orphans Court
13 frames issues and you send them up the hall or up the
14 street or upstairs to another judge to try before a jury,
15 because you are not deemed to have the jurisdiction,
16 unless everybody agrees that it can be tried before
17 you without a jury. I see no sense to that. I see no
18 sense to having a judge in probate matters elected every
19 four years when a judge trying negligence cases or con-
20 tract matters or others has a tenure of fifteen years.

21 JUDGE FRIEDMAN: I am for that.

1 MR. ENEY: I see no rationalization at
2 all in saying that the judge who passes on probate matters
3 involving estates of thousands of dollars and millions
4 of dollars is to be compensated on the basis of a rather
5 modest per diem but the judge trying the negligence case
6 has a much more substantial salary. I think these are
7 things that the whole Committee and the Commission is
8 in accord with, that the judge exercising probate
9 functions should have the same dignity, same status,
10 same tenure, same pension, same salary as the other
11 judges of general jurisdiction. That's one point.

12 The next point, it seems to me, is that the
13 court exercising probate jurisdiction ought not to
14 be hamstrung with a limited statutory jurisdiction,
15 it ought to have all the jurisdiction of an equity court,
16 all jurisdiction of a law court trying jury cases, all
17 jurisdiction of a probate court, and not have a situation
18 where if you get a particularly difficult administration,
19 you have to go into equity because the Orphans Court
20 with its statutory powers can't handle everything. That
21 happens every year, you have to move administration over

1 to equity.

2 The thing comes down therefore, it seems
3 to me, to the question of, it is the same question in
4 the city or county, that Melvin posed. It is simply
5 this. How is the best method of mechanically handling
6 the probate function that the court of general jurisdic-
7 tion ought to handle with a judge of the same general
8 qualifications, same tenure, same education, same
9 salary, same pension, same everything, that the judge of
10 general trial jurisdiction has?

11 If you start with that premise, don't you
12 then end up only with the question of: Should you have
13 a separate deputy clerk handling probate matters?
14 Should you have separate judge or judges handling probate
15 matters and nothing else? Should they have separate
16 masters? And should you create within the court of
17 general jurisdiction a separate division that could
18 handle probate matters, and finally what is the best
19 mode or mechanics of handling the part of the probate
20 work you just mentioned, the contact with the public not
21 through a lawyer but the person who has a child who has

1 a thousand dollar savings account and somebody has
2 to decide how to dole that money out until the child is
3 of age.

4 If you would comment on those things, I think
5 you and Judge Colgan both, you would furnish a tremendous
6 amount of valuable assistance because, believe me, there
7 is no intention here to abolish the probate system.
8 It is simply a question of upgrading judges.

9 JUDGE FRIEDMAN: I have a strong
10 view on that. I am for probating of wills or granting
11 of letters in intestacy that the court, be it one judge
12 or two or three judges, the court would only have
13 jurisdiction to grant these letters.

14 MR. ENEY: You mean the judge by that.

15 JUDGE FRIEDMAN: The judge. Number one,
16 it is a formal probate of a will. You have your wit-
17 nesses, you swear them in. It brings to a higher caliber
18 the probating of a will. It stops all shenanigans that
19 possibly could happen because in my experience, unfortunately
20 we had a couple bad ones, but any time there was a bad
21 one, the will was probated with the Register of Wills,

1 the culprit is always afraid to come before the judges
2 of the Orphans Court of Baltimore City sitting as judges
3 with robes. They feel that they just won't do it.

4 I am also in favor of a judge handling all
5 of the guardianships, which we have problems with, and
6 money subject to order of court.

7 I feel again this is as important or more
8 important than any of the People's Court cases. More
9 important than the Magistrate cases. This is big money
10 involved. We had one in today where commission alone was
11 \$120,000. We have an opinion to write, Judge Colgan
12 and I, we are going to finish it, implied revocation
13 of a will. We had one we just wrote a small opinion and
14 order on. What was the question?

15 JUDGE COLGAN: This question was whether all
16 of Chapter 10 of the Rules of the Court of Appeals apply
17 to Orphans Court or just a segment.

18 JUDGE FRIEDMAN: On that score I am a
19 hundred per cent for any of the jurisdiction or any of
20 the functions of the court should be done by a judge,
21 definitely.

1 MR. ENEY: You would agree, I am sure, with
2 the proposition I said the Commission certainly was in
3 favor of, namely, that the judges exercising probate
4 function should have the same status, same dignity,
5 same salary, same pensions, same tenure as any other
6 judges of courts of general jurisdiction.

7 JUDGE FRIEDMAN: I am for that a hundred
8 per cent personally. Are you for that, Judge?

9 JUDGE COLGAN: That's an interesting
10 question. I am all in favor of increasing the jurisdic-
11 tion of the probate court because we are hamstrung by
12 that horrible section in the Code. Mr. Gans urged its
13 repeal in 1913.

14 I speak in deference to a man here with
15 twelve years experience. I look at it in this light.
16 There are not many things that cannot be cured by a
17 few simple deletions in the statutes and perhaps a few
18 additions.

19 Whether we are to get up to the Supreme
20 Bench level is in the hands of the people of the state.
21 It would be nice but I reiterate and I agree, I am not

1 in opposition to the Chief Judge, that there are very
2 few, to my mind, sir, relatively simple things that
3 could be done to give us greater jurisdiction, which,
4 of course, would increase the work, the time. We spend
5 much more time than eleven to one in court. I would
6 like to see done what is done in the larger cities, as
7 my very slight study has shown, perhaps to maintain a
8 separate probate court or make the probate court juris-
9 dictionwise a complete probate court in every sense of the
10 word.

11 MR. ENEY: By that you mean it has all
12 powers possible to confer on a court, equity powers,
13 jury powers, all the powers a court of general jurisdic-
14 tion has?

15 JUDGE COLGAN: To paraphrase a model
16 probate code, I have been working about a year and a
17 half to complete the administration of an estate and
18 all the questions relevant thereto from the beginning
19 to the end, yes, sir.

20 MR. ENEY: If you had the judges of the
21 same status and you had the court with the broad powers

1 and having the same jurisdiction as the general court,
2 what would be the difficulty in creating within that
3 court a division to handle probate matters? Wouldn't
4 that in effect be the same thing except for a name as
5 the Orphans Court today except with broader powers and
6 so forth?

7 JUDGE FRIEDMAN: Again I can't argue with
8 you or any of the Commission as to the set-up. I say
9 being the Chief Judge, I am proud of what the court is
10 doing today. But to lift it up and equal to the Supreme
11 Bench or any raising of the caliber or anything else, of
12 the court, I am for it a hundred per cent.

13 You got to realize in testamentary law,
14 especially in Baltimore City, probate law, we are
15 busier in the summer than in the winter. The members
16 of big law firms understand this because most of their
17 lawyers are trying cases in the winter in the Supreme
18 Bench and Federal courts and when it comes to the
19 summertime, they are cleaning up their estate work.
20 Since I have been Chief Judge, we have as many hearings
21 as lawyers want, formal or informal, in the summertime.

1 That means that in my twelve years I have never taken
2 more than a week's vacation. That's nothing to brag.
3 Judge DiDomenico in four years has never taken a vacation.
4 Only time he has been off is when he is sick. Because
5 of the statute two of us have to be there. That means
6 that we don't have the time that the members of the
7 Supreme Bench have for vacation time, because of the amount
8 o f work that we have in the summertime.

9 THE CHAIRMAN: Excuse me, Mrs. Bothe has a
10 question.

11 MRS. BOTHE: I want to ask a question.
12 First, I will comment, it seems to me, in view of your
13 last remark, if our suggestion were carried out and
14 you were part of the Superior Court system, that any
15 of the judges in the Superior Court would be able to
16 relieve you and allow you to take a vacation, which is
17 all the more reason for the advisability of it.

18 JUDGE FRIEDMAN: I question that. I
19 question any judge, please forgive me, forget the judges
20 of Baltimore City, of any Circuit Court, I question any
21 judge that hasn't sat in a real probate court with

1 testamentary problems to come in within a week or two
2 and try to do a good job. It is impossible.

3 MRS. BOTHE: Every four years you have
4 the possibility of new people.

5 JUDGE FRIEDMAN: You can go down the
6 line, not talkin g about individuals, they don't have the
7 practice, they didn't have the practice when they were
8 practicing attorneys, and as judges, they never had
9 this type of law to come up to and they are just not
10 capable of jumping in within a week or month's time and
11 do a good job.

12 MRS. BOTHE: That brings out another point
13 which is that every four years you run the risk of having
14 someone ascend to the Bench. I am one of the lawyers
15 you are talking about on this Commission that knows
16 just about nothing. You know how rarely you see me
17 there. Yet I could decide to run for Orphans Court and
18 you would be never able to take a vacation, I am afraid.

19 JUDGE FRIEDMAN: Then I could make a living.

20 MRS. BOTHE: What I was going to ask, getting
21 back to this question, we, of course, are only framing a

1 constitutional framework, not formulating the details.
2 Do you really feel it necessary that the Orphans Court,
3 of Baltimore City, continue to be a constitutional
4 court?

5 JUDGE FRIEDMAN: What do you mean by
6 constitutional court?

7 THE CHAIRMAN: Created by and referred to
8 in the Constitution.

9 MRS. BOTHE: Created by the Constitution
10 to satisfy your feelings about its continuation.

11 JUDGE FRIEDMAN: You got me now. You are
12 the constitutional lawyer, Bob.

13 JUDGE COLGAN: I say yes, it always has
14 been. The only defect of the Orphans Court, I have
15 been over it twice, we are a part of the judicial power
16 of the State of Maryland, not through my wishes, but we
17 have been since 1798 and before. I offhand see no reason
18 why it should not be a constitutional court.

19 MRS. BOTHE: Can I ask one last question
20 because I would like to clear it up for the record.
21 I know you are not speaking for the Orphans Courts around

1 the state, the county Orphans Courts.

2 JUDGE COLGAN: No.

3 MRS. BOTHE: I gather you hold no
4 particular brief for the set-up in those courts. Are
5 you actually proposing that the Orphans Court of
6 Baltimore City, as it now exists, continue as a
7 constitutional court but that the county courts be
8 eliminated or merged? If so, how would you handle the
9 county courts?

10 JUDGE FRIEDMAN: My opinion would be not
11 to abolish all the Orphans Courts of the state. We have
12 a million people in Baltimore City in round figures.
13 If you take Prince Georges County, Montgomery County,
14 make an Orphans Court there, take Anne Arundel County,
15 a couple others, there would be another million people,
16 you have an Orphans Court there. You will find Montgomery,
17 Prince Georges, Baltimore County, Anne Arundel County
18 will have problems like we are talking about now.
19 Because of the crowded dockets in the Circuit Courts,
20 Baltimore County has just gotten three new judges. Soon
21 as they find more room, they will have more judges.

1 The same thing is going to happen.

2 MR. SYKES: One suggestion I can make.
3 That is no matter which way the Commission may ultimately
4 go on this thing, in the final report the dealing with
5 the Orphans Court should be changed so that the one
6 sentence that Judge Friedman quoted will not be the way
7 the subject is dealt with so that the thinking of the
8 Commission will really be reflected in its report.

9 MR. ENEY: There won't be any doubt about
10 that.

11 JUDGE FRIEDMAN: What page was that on?

12 THE CHAIRMAN: I think I can find it.

13 MR. SYKES: I am sure it is going to be
14 excised.

15 THE CHAIRMAN: We can blame our reporter
16 for that.

17 MR. ENEY: That is grossly unfair.

18 JUDGE COLGAN: Page 13.

19 JUDGE FRIEDMAN: When a lawyer brings in
20 a bad petition, he blames it on his secretary. They used
21 the word abolished.

1 MR. SYKES: Very back-handed way of doing
2 it.

3 JUDGE FRIEDMAN: "Since the judicial power
4 of the state is exclusively vested in these four courts,
5 the omission of reference to Orphans Courts, as the same
6 are known today, means they will be abolished."

7 THE CHAIRMAN: We can agree that is an
8 unfortunate way of putting it.

9 MR. ENEY: I think perhaps the Orphans
10 Court has more purely ex parte matters than any other
11 court in the area of guardianships where there is no
12 lawyer and there is no other side. Does this, in your
13 thinking, pose any particular problem? Isn't it just
14 a matter of a judge exercising judgment and discretion?
15 This doesn't require a plurality of judges, does it?

16 JUDGE FRIEDMAN: No. I divide it up.
17 In guardianship cases you usually get money into a
18 guardianship case from an estate where there is property
19 plus money. You get it from a settlement. We have a
20 tremendous amount of settlements, accident work, damage
21 settlements where there are minors. You can go up into

1 equity under the trust, the new section. We have a lot
2 of that plus properties. You have a lot of gifts from
3 grandparents.

4 Usually there is an attorney in the matter
5 with the guardianship when they come in. After that,
6 they leave. Usually the guardian is on her own or his
7 own. We have to go after them. We have one man in the
8 Register of Wills that does nothing but check inventories
9 when they are supposed to be filed, accounts when they
10 are supposed to be filed and guardianships. With my
11 experience, I make full bond on all guardianships to
12 protect the infants. I find from experience if you
13 are not watching them, the parents or people that are
14 keeping these kids, it becomes their money. They have
15 the bankbook, they take the money and do what they want.
16 They forget to petition the court for authority to use the
17 money. Subject to further order of court, we can keep
18 close watch on them.

19 Not to brag, I have gone as far as
20 Wilmington to some kids, mentally retarded, gone to
21 schools, and when they were allowed big money, three or

1 four hundred dollars a month, I checked with schools,
2 checked with the Welfare Department and everything
3 else. Don't forget in our guardianships subject to further
4 order, most of the people are in the below average class,
5 talking about low income people. They can't be on Welfare
6 as long as they have money in the Orphans Court. That
7 means they are trying to get it out as soon as they can
8 to go on Welfare. We have conferences with the Welfare
9 and we have conferences with the people. It is a circle.
10 It has to be watched, no doubt about it.

11 MR. ENEY: In that area of the probate
12 work, you think that has to be performed by a judge, not
13 a master?

14 JUDGE FRIEDMAN: I think anything in the
15 probate line, it is my personal opinion, should be
16 handled by a judge. To me they are so much more important
17 than a rent case in the People's Court and family
18 argument in the Municipal Court. From practicing thirty
19 years in general practice, being in the City Solicitor's
20 office and working with Judge Digges in a title company
21 many, many years ago, I find that there is more respect

1 and less chance of any fraud where there is a judge
2 involved.

3 Mr. Hargrove, I waited for you. We have
4 done a lot of business with you since you have been
5 practicing law.

6 MR. HARGROVE: I have to agree with you.
7 I do a few guardianships. I agree. I know if they
8 were left alone and the court did not really exercise
9 some jurisdiction over them, I feel that the money might
10 be misused. I know also as a lawyer perhaps that where
11 you have people who are in need of money, they can worry
12 the lawyers to death too to get the money. I think some
13 lawyers might succumb if it is easy to take out. If you
14 have to go to the court, people become less concerned
15 about getting the money. This is an aspect that
16 really requires at least the judge to have some say.

17 I don't know that you perhaps have to have
18 the total supervision. I think perhaps the judge ought
19 to know what's going on. I think that's what Mr. Eney
20 was really getting at. You can actually relegate some of
21 the administration aspects of this to someone other than

1 the judge which perhaps would give a judge more time to
2 have hearings and devote time to some more serious
3 problems, probate problems. I don't know if I was
4 correct but I think that's probably what you were driving
5 at.

6 MR. ENEY: That's what I had in mind. As
7 an Equity Master does now, he doesn't act, he recommends
8 to the judge to act. I was thinking in this area of
9 guardianships you might have a master who would take
10 the initial conference and make a recommendation to the
11 judge.

12 JUDGE FRIEDMAN: As I said before, Mr.
13 Eney, I am not in favor of masters. Not in experience
14 but I would rather see a judge even at that level. If
15 you don't want to call him a judge equal to the Supreme
16 Bench of Baltimore City, I would rather see a judge with
17 that authority than a master.

18 For example, if you take a petition for
19 fee or something up to the master, he says, I am going
20 to sit on it a while. He sits on it two weeks. You go
21 back. The auditor wants to make a final report. He says

1 I can't make a final report because the master has not
2 okayed the counsel fee. The girl says the master is
3 busy. If you don't hear from us in five days, it is
4 all right.

5 MR. ENEY: I think you made your point.
6 You say these matters, the judge on the Bench in a
7 robe carries a measure of enforcing respect, et cetera,
8 that is important.

9 JUDGE FRIEDMAN: Right. Tremendous amount
10 of money involved in the Orphans Court of Baltimore
11 City.

12 MR. SYKES: That is particularly so with
13 regard to laymen in the court. With lawyers they are
14 used to dealing with masters but dealing with a parent,
15 you feel particularly the judge's robes are important.

16 MRS. BOTHE: We had not specified where the
17 functions or particular functions of the Orphans Court
18 would go. It would seem possible under the structure
19 we proposed to take some of these functions and put them
20 in the hands of what we call the District Court, court of
21 limited jurisdiction, where a judge would handle them but

1 not a judge on the general jurisdiction level. Do you
2 think it would be possible perhaps to put some of these
3 quasi judicial functions --

4 JUDGE FRIEDMAN: No, I think, going to
5 other cities and other states, I think that surrogate
6 court, probate court or Orphans Court dealing with
7 testamentary law should be a separate court. This is
8 my honest opinion. When an estate starts the court should
9 be able to finish it completely and should have full
10 jurisdiction. I don't think it should be divided.
11 I think anything to do with guardianships, intestacy,
12 anything with a will, should be handled by the Orphans
13 Court and be completed by the court.

14 MR. HARGROVE: When you say you want it to
15 be a separate court, would it make any difference if it
16 was a part of the court system? For example, in a
17 Municipal Court, you have a Traffic Division and Criminal
18 Division. The Committee in the report, I suppose,
19 certainly you have to have a probate court, no question
20 about that. I don't think there is any question of
21 abolishing this court at all. I think it was just a

1 matter of raising it. Would it make any difference if
2 this court was complete within a division of a total
3 court system?

4 JUDGE FRIEDMAN: No, I am not against
5 that personally. I am not for rotating it.

6 MR. HARGROVE: Not for rotating judges?

7 JUDGE FRIEDMAN: That is right, because of
8 my experience, I keep on saying I because of my experience,
9 I find, I am not ashamed, I should be proud, I get calls
10 from the judges of the Supreme Bench and they come down
11 to talk to me on these matters, not because they are not
12 good judges, they just don't meet these problems everyday.
13 What it took Judge Colgan a year and a half to learn
14 and took me twelve years to learn, I am sure the
15 judges of a higher court or equal court to us are
16 not going to learn within a year or two. You give them
17 a year to rotate, next one comes in with the same
18 problem, he will run to somebody else to ask them, what
19 can I do about it? I am not saying the three judges in
20 Orphans Court now are the smartest in testamentary law
21 but I feel we do have experience and we can do a job.

1 The only way you can do a good job for probate or testa-
2 mentary work is to be experienced and stay in the court
3 and administer that type work.

4 MR. HARGROVE: As the Judiciary Act is
5 set up, I suppose you almost have to have a probate
6 section or division in many of the larger counties,
7 Montgomery, Prince Georges, Baltimore County. Would it
8 make any difference if a judge is assigned to probate
9 work there and is assigned to Baltimore City, because you
10 refer to vacation, such as proposed under the judiciary
11 act? That is, the Chief Judge has authority to assign
12 a judge to virtually any section of the state really.

13 JUDGE FRIEDMAN: No, again I say --

14 MR. HARGROVE: In other words, you would
15 be satisfied as long as the Judge coming in was
16 competent in the field of probate?

17 JUDGE FRIEDMAN: No, I still say I am
18 personally against consolidating or merging the
19 Orphans Court, not talking about counties, talking about
20 the Orphans Court of Baltimore City, into the Supreme
21 Bench as it is now. I say I am not against raising the

1 court to equal the Supreme Bench but I am against rotating
2 testamentary work in any court. This is my personal
3 opinion. I think, with all due respect, from my
4 experience and from the work that comes into the court,
5 I think it is better for the lawyers, better for the lay-
6 men, better for everybody concerned that probate courts
7 should be a separate court.

8 MR. SYKES: By separate court, you mean the
9 judges stay there. If it is a separate division of a
10 general court of general jurisdiction, it would be satis-
11 factory to you provided the judges stayed there and
12 didn't rotate?

13 JUDGE FRIEDMAN: Again I can't talk for
14 Judge Colgan or Judge DiDomenico, he is not here, they
15 are sitting judges too. They ran and they do a good job.
16 I am sure that I want to protect them as much as I want
17 to protect myself. I could have come here myself
18 and talked just for Danny Friedman. I am talking as
19 a court, not as an individual.

20 MR. SYKES: In either capacity, or in
21 both, is it your position that it would be satisfactory

1 to have a probate division of a court of general
2 jurisdiction provided the specialized nature of the
3 probate work is recognized and the judge in that division
4 devotes his full time to that division and there is no
5 rotation.

6 JUDGE FRIEDMAN: Judges.

7 MR. SYKES: Judge or judges.

8 JUDGE FRIEDMAN: I will make a prediction
9 to you, Melvin, you are a good practicing attorney.
10 In Baltimore City if the Orphans Court of Baltimore
11 City has full jurisdiction and is a separate court or a
12 part of the Supreme Bench but has no rotating judges,
13 we will have more work within one year than the equity
14 court has today.

15 MR. SYKES: This may very well be. I
16 would like to get for myself and for the record an
17 answer to my question.

18 JUDGE FRIEDMAN: Don't pin me down.

19 THE CHAIRMAN: The judge has given his
20 opinion as indirectly as he can.

21 MR..SYKES: Very well.

1 THE CHAIRMAN: I think the judge stated
2 his position very clearly. At least I think I can
3 devine his position.

4 JUDGE FRIEDMAN: Lady and gentlemen, I
5 personally appreciate this opportunity to come before
6 you. You will have to excuse me for being a little peeved
7 but I got Mr.Eney first and told him to bring boxing
8 gloves. He came into court, I closed the door, and he
9 said we didn't need boxing gloves, did we? I said no.

10 THE CHAIRMAN: Judge, I would like to say
11 on behalf of both the Committee and the Commission that
12 we again apologize for the oversight. It was certainly
13 an oversight, not intentional. We are happy that you
14 could come here today to discuss the matter of the
15 Orphans Court with both of you. Thank you for coming.

16 MR. ENEY: I like to say I think your
17 comments are very helpful. I hope at least that you
18 have a better idea of what the Commission is trying
19 to do and what the Committee was recommending in that
20 instance.

21 JUDGE FRIEDMAN: The Liaison Committee of

1 Bar Association to the Orphans Court, each court has a
2 Liaison Committee, they, as they are appointed by the
3 new president, call in the three judges of the Orphans
4 Court, since I have been there, and ask us what they can
5 do for us or what we would recommend as to change of law
6 or anything else.

7 My two associates and I agreed we would give
8 them something of background about the Constitutional
9 Convention. Their project for the year is going to
10 be on this subject. As I say, I don't know what they are
11 going to come up with. They have a very good committee.
12 I was very happy about it. They had a hundred per cent
13 attendance. Evan Chriss is Chairman, I think twelve men
14 on the Committee, all were present at the meeting, we
15 had a very fine meeting. Some other people are also
16 interested in the subject. Lawyers that do come over to
17 the court are interested in the court itself and want
18 to know what they can do for us and everything else.
19 I am sure that you all know that the majority or big
20 majority of the Bar is very interested in this Constitutional
21 Convention.

1 MR. ENEY: I think that's true.

2 THE CHAIRMAN: We find it out quite often.

3 JUDGE FRIEDMAN: Again I want to thank you
4 very much.

5 MR. SYKES: I want to suggest that a copy
6 of the transcript of these proceedings be sent to Judge
7 Friedman and Judge Colgan and also to Evan Chriss, the
8 Chairman of the Liaison Committee of the Baltimore City
9 Bar Association.

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